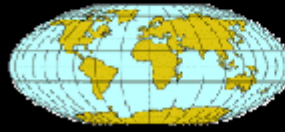




# National Housing Rights Legislation



United Nations Housing Rights Programme, Report No. 3

United Nations Human Settlements Programme (UN-HABITAT)

3rd Edition, 2006



# National Housing Rights Legislation



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### Acknowledgements

Scott Leckie and Bret Thiele of the Centre on Housing Rights and Evictions (COHRE) prepared the draft that forms the basis for the first edition of this report. The COHRE ESC Rights Litigation Programme provided updated material in December 2004. Their collaboration and support is very much appreciated.

Selman Ergüden, Inge Jensen and Angela Hakezimana (all of UN-HABITAT) finalised the substantive content of the report. The two former developed the research design. Moreover, Selman Ergüden co-ordinated and supervised the activities of this project, while Inge Jensen finalised the structure and layout of the report.

Special thanks are due to Government of Belgium for financial support, through their contribution to the Global Campaign for Secure Tenure. Without this financial contribution, this research project and the publishing of this report would not have been possible.



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### Notes

1. Actual text not available. Source: Note Verbale from government of Bolivia to UN Commission on Human Rights (28 January 1994).
2. Unofficial translation.
3. Unofficial translation.
4. See: Judgment of the Federal Constitutional Court of 26 May 1993 (published in “Neue Juristische Wochenschrift” (1993), pp. 2035-2037).
5. Unofficial translation.
6. Actual text not available. Source: UN Doc. E/1994/104/Add.2, para. 546 (1994).
7. Actual text not available. Source: UN Doc. E/1990/5/Add.19, para. 270 (1990).
8. Actual text not available. Source: UN Doc. E/1994/104/Add.3, para. 332 (1994).
9. Actual text not available. Source: UN Doc. E/1990/5/Add.7, para. 178 (1990).
10. Actual text not available. Source: Note Verbale by the Government of Sudan to the UN Centre for Human Rights, 25 January 1994.
11. Actual text not available. Source: Note Verbale from government of Bolivia to UN Commission on Human Rights (28 January 1994).
12. Actual text not available. Source: UN Doc. E/1986/3/Add.8, para. 67 (1986).
13. Actual text not available. Source: UN Doc. E/1994/104/Add.2, para. 548 (1994).
14. Unofficial translation.
15. Unofficial translation.
16. Actual text not available. Source: Dr. Dragana Avramov, Homelessness in the European Union: Social and Legal Context of Housing Exclusion in the 1990s, p. 27, Brussels: Feantsa (1995).
17. Actual text not available. Source: Note Verbale from the Permanent Mission of Germany to the UN Centre for Human Rights, 23 February 1994.
18. Actual text not available. Source: Note Verbale from the Permanent Mission of Germany to the UN Centre for Human Rights, 23 February 1994.
19. Actual text not available. Source: UN Doc. E/1986/4/Add.27, para. 24 (1986).
20. In 1967, in legislation creating mortgage-subsidy programs. United States Code Annotated; Title 12. Banks and Banking; Chapter 13 — National Housing.
21. Pub. L. 90-448, s 2, Aug. 1, 1968, 82 Stat. 476.
22. Actual text not available.
23. Actual text not available. Source: UN Doc. E/1990/5/Add. 5, para. 407 (1990).
24. 42 U.S.C.A. § 1441 United States Code Annotated; Title 42. The Public Health and Welfare; Chapter 8a — Slum Clearance, Urban Renewal, and Farm Housing; Subchapter I — General Provisions.
25. July 15, 1949, c. 338, s 2, 63 Stat. 413; May 25, 1967, Pub.L. 90-19, s 6(a), 81 Stat. 21.
26. United States Code Annotated; Title 42. The Public Health and Welfare; Chapter 8a — Slum Clearance, Urban Renewal, and Farm Housing; Subchapter I — General Provisions.
27. Pub.L. 90-448, Title XVI, s 1601, Aug. 1, 1968, 82 Stat. 601; Pub.L. 93-383, Title VIII, s 801(1), (2), Aug. 22, 1974, 88 Stat. 721.
28. United States Code Annotated; Title 42. The Public Health and Welfare; Chapter 69 — Community Development.
29. Pub.L. 93-383, Title I, s 101, Aug. 22, 1974, 88 Stat. 633; Pub.L. 95-128, Title I, s 101, Oct. 12, 1977, 91 Stat. 1111; Pub.L. 96-399, Title I, s 104(a), Oct. 8, 1980, 94 Stat. 1616; Pub.L. 98-181, Title I, s 101(a), Nov. 30, 1983, 97 Stat. 1159; Pub.L. 100-242, Title V, s 502(a), (b), Feb. 5, 1988, 101 Stat. 1923; Pub.L. 101-625, Title IX, ss 902(a), 913(a),

Nov. 28, 1990, 104 Stat. 4385, 4392; Pub.L. 103-233, Title II, s 232(a)(2)(A), Apr. 11, 1994, 108 Stat. 367.

30. Actual text not available. Source: Note Verbale from the government of Denmark to the UN Commission on Human Rights (2 January 1994).
31. Unofficial translation.
32. Actual text unavailable. Source: Dr. Dragana Avramov, *Homelessness in the European Union: Social and Legal Context of Housing Exclusion in the 1990s*, p. 27, Brussels: Feantsa (1995).
33. Actual text not available. Source: Note Verbale from the government of Denmark to the UN Commission on Human Rights (2 January 1994).
35. Actual text not available. Source: Note Verbale from the government of Denmark to the UN Commission on Human Rights (2 January 1994).
36. In 1990, Congress passed the Americans with Disabilities Act, which strengthened protections from discrimination (including housing discrimination) for disabled persons. United States Code Annotated; Title 42. The Public Health and Welfare; Chapter 126 — Equal Opportunity for Individuals With Disabilities.
37. Pub.L. 101-336, s 2, July 26, 1990, 104 Stat. 328.
40. Protection against housing discrimination is provided by the Fair Housing Act, which was originally adopted to protect against discrimination based on race, religion or national origin in 1968, and amended over the years to provide protection to addition categories of people, including women (1974) and disabled persons (1988). (United States Code Annotated; Title 42. The Public Health and Welfare; Chapter 45 — Fair Housing; Subchapter I — Generally).
41. Unofficial translation.
42. Actual text unavailable. Source: Dr. Dragana Avramov, *Homelessness in the European Union: Social and Legal Context of Housing Exclusion in the 1990s*, p. 27, Brussels: Feantsa (1995).
43. In 1987, as the numbers of homeless people grew throughout the country, Congress passed the McKinney Act, which provided funding for temporary shelter and services for homeless people. United States Code Annotated; Title 42. The Public Health and Welfare; Chapter 119 — Homeless Assistance; Subchapter I — General Provisions.
44. Pub.L. 100-77, Title I, s 102, July 22, 1987, 101 Stat. 484.
45. See, e.g., Commission on Human Rights resolution 2001/34 on “Women’s equal ownership of, access to and control over land and the equal rights to own property and to adequate housing”, UN Doc. E/CN.4/RES/2001/34 (adopted by consensus on 20 April 2001) and Commission on Human Rights resolution 2000/13 on “Women’s equal ownership of, access to and control over land and the equal rights to own property and to adequate housing”, UN Doc. E/CN.4/RES/2000/13 (adopted by consensus on 17 April 2000).
46. UN Commission on the Status of Women, resolution 41/1 (adopted 1997).
47. United States Code Annotated; Title 42. The Public Health and Welfare; Chapter 21 — Civil Rights; Subchapter I — Generally.
48. Protection against housing discrimination is provided by the Fair Housing Act, which was originally adopted to protect against discrimination based on race, religion or national origin in 1968, and amended over the years to provide protection to addition categories of people, including women (1974) and disabled persons (1988). (United States Code Annotated; Title 42. The Public Health and Welfare; Chapter 45 — Fair Housing; Subchapter I — Generally).
49. Pub.L. 90-284, Title VIII, s 804, Apr. 11, 1968, 82 Stat. 83; Pub.L. 93-383, Title VIII, s 808(b)(1), Aug. 22, 1974, 88 Stat. 729; Pub.L. 100-430, ss 6(a)- (b)(2), (e), 15, Sept. 13, 1988, 102 Stat. 1620, 1622, 1623, 1636.
50. Article 33 of the Constitution of Uganda guarantees the equal treatment of women and men including equal opportunities in political, economic and social activities and 33 states that “laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution.”
51. Actual text not available; source UN Doc. E/1990/5/Add.22 (1990).
52. Actual text not available. Source: UN Doc. E/1990/5/Add.7, para. 179 (1990).
54. Actual text not available. Source: UN Doc. E/1986/Add.8, para. 67 (1986).
55. Published in the Official Gazette of the Federation of Bosnia and Herzegovina, no. 11/98 Unofficial Translation 8 April 1998.

56. Published in the Official Gazette of the Federation of Bosnia and Herzegovina, no. 11/98, dated 3 April 1998.
57. Published in the "Official Gazette" of the Federation of Bosnia and Herzegovina, 27/97, 11/98, 22/99, 27/99, 7/00.
58. Published in the Official Gazette of Republika Srpska, no. 38/1998, dated 11 December 1998.
61. States.
62. Alternative translation: "national housing affairs."
63. Alternative translation: "The State shall respect market management in order to guarantee a better standard of living for people."
64. Alternative translation: "Each resident of Bavaria is entitled to adequate housing."
65. Alternative translation: "The home is for everyone a sanctuary for everyday and shall be inviolable."
66. Alternative translation: "The Republic of Hungary shall provide support for those in need through a wide range of social measures."
67. 'Urban area' refers to 'urban land'.
68. Unofficial translation.
69. Unofficial translation.
70. Unofficial translation.
71. Unofficial translation.
72. Unofficial translation.
73. Unofficial translation.
74. Unofficial translation.
75. Unofficial translation.
76. Actual text of Art. 123, Subsec. XI (Sec. B(f)) unavailable.
77. Actual text not available.
78. "Naturally, the provisions of this article encompass the question of satisfactory housing." (Note verbale sent by the Permanent Mission of Turkey (Geneva) to the UN Centre for Human Rights, 6 April 1994, p. 2).





**UN-HABITAT**

ABOUT  
National Housing Rights Legislation  
2nd edition  
HS/640/01 E  
ISBN 92-1-131544-1 (electronic version)  
ISBN 92-1-131513-1 (UNHRP report series, electronic  
version)

**Text source:** This is a revised and expanded version of an electronic report first published in 2002 (ISBN 92-1-131509-9) and later updated in 2005 (ISBN 92-1-131525-5).

This electronic publication was designed/created by **Inge Jensen**.

This version was compiled on 24 January 2006.

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### Introduction

"The States Parties to ... [the International Covenant on Economic, Social and Cultural Rights] recognise the right of everyone to an adequate standard of living for himself and his family, including ... housing...."

"Each State Party to the present Covenant undertakes to take steps ... with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

(The International Covenant on Economic, Social and Cultural Rights, Articles 11(1) and 2(1)).

As part of their efforts to ensure the full and progressive realization of the human right to adequate housing, the United Nations Human Settlements Programme (UN-HABITAT) and the United Nations Office of the High Commissioner for Human Rights (OHCHR) published a joint report entitled *Housing Rights Legislation* in 2002. That report was also the first output of the United Nations Housing Rights Programme, a joint programme initiated by the two agencies as mandated by resolutions of the Commission on Human Settlements (1997) and the Commission on Human Rights (2001).

The report contained a review of housing rights in international and national law, including a discussion of housing rights as progressive legal obligations and reviews of selected adjudication (e.g. how housing rights legislation is being implemented). The *Housing Rights Legislation* report illustrates that effective constitutional and legislative measures on the right to adequate housing are not only realistic but have already been in use successfully in a number of countries. The examples presented there provide guidance to the development of a model legislation framework with respect to specific components of the right to adequate housing, and legislative reforms that could be initiated to advance housing rights more effectively.

To provide States and other stakeholders with further guidance on the normative content of housing rights – and thus to support the goal of developing a model framework on housing rights, as elaborated in the *Housing Rights Legislation* report – UN-HABITAT is also publishing three supportive compilations on international and national housing rights legislation (all of which are published in electronic format only), namely:

- International Instruments on Housing Rights;
- National Housing Rights Legislation; and
- Compilation of Selected Adjudication on Housing Rights.

It is the objective of the United Nations Housing Rights Programme to prepare periodic updates of all these reports, to facilitate a knowledge base, a media for information exchange and assist the development and adoption of legislative measures to support the full and progressive realization of the human right to adequate housing.

The present report, *National Housing Rights Legislation*, is one of these three supportive compilations. It contains excerpts from a large number of constitutional clauses and other national legislation with respect to housing rights. The legislation presented represents a variety of legal, political, economic and cultural systems and traditions. Although this compilation is not comprehensive in terms of coverage, it is representative of the various means by which States have chosen to include housing rights within their domestic legal systems.

Several States have formulated general statements on housing within their national constitutions regarding the promotion and protection of housing rights. These statements are enforceable legal standards in their own right. Moreover, they can also be used to determine the context in which national housing policy should be read. They can therefore be used to interpret the legislative intent of more specific issues related to housing rights. Other national constitutions directly incorporate international treaty obligations into domestic law, including treaty obligations dealing with housing rights. In addition to these constitutional clauses on housing rights, the report includes references from the following types of legislation – each of which provides a framework for determining the overall status of legislative protection and promotion of housing rights:

- housing acts;
- rent and rent restriction legislation;
- specific housing rights legislation, including homeless persons acts;
- landlord-tenant law;
- urban and rural reform laws;

- security of tenure legislation;
- civil and criminal codes;
- land use, zoning and agrarian laws;
- planning laws and regulations;
- building codes and standards;
- laws relating to inheritance rights of women;
- land acquisition and expropriation acts;
- non-discrimination;
- equality rights;
- eviction laws;
- development laws; and
- environmental standards.

The electronic report offers three separate entry points to the national legislation presented, namely:

- Legislation by thematic area (legislation presented by thematic area and alphabetically by country, see below);
- Legislation by region/country (legislation presented by geographical sub-region and alphabetically by country); and
- Legislation by country (legislation presented alphabetically by country).

The thematic sub-chapters (presented below) were chosen because they either offer examples of how the components which comprise the right to adequate housing under international law are addressed in national law; or offer examples of broader areas of the law, such as urban development, which include housing rights as essential elements. The thematic areas are the following:

- A. General policy statements on housing
  - 1. Constitutional sources of housing rights
  - 2. Indirect (by reference to treaties) sources of housing rights
  - 3. General policy statements regarding the promotion and protection of housing rights
  - 4. General policy statements regarding urban development
  - 5. General policy statements regarding rural development
- B. Legal security of tenure
  - 6. Legal security of tenure: due process generally
  - 7. Legal security of tenure: ownership generally
  - 8. Legal security of tenure: rental generally
  - 9. Legal security of tenure: informal tenure
  - 10. Availability of services, materials, facilities and infrastructure

- 11. Access to energy (heat, cooling, cooking, etc.)
- 12. Informal settlements: regularization of informal settlements
- 13. Informal settlements: adverse possession provisions
- 14. Informal settlements: sites and services
- C. Protection against forced eviction
  - 15. Forced evictions: prohibition of forced evictions
  - 16. Forced evictions: due process
  - 17. Forced evictions: relocation and resettlement
- D. Non discrimination
  - 18. Discrimination and equality rights: ownership
  - 19. Discrimination and equality rights: rental
  - 20. Discrimination and equality rights: gender issues
- E. Provision of affordable housing for the poor
  - 21. Affordability: subsidy programmes
  - 22. Affordability: provision of public/social housing
  - 23. Affordability: rent control provisions
  - 24. Affordability as an explicit goal of economic policy
- F. Accessibility
  - 25. Accessibility generally
  - 26. Accessible to the elderly
  - 27. Accessible to children
  - 28. Accessible to the physically disabled
  - 29. Accessible to the mentally disabled
  - 30. Accessible to persons with HIV/AIDS
  - 31. Accessible to other vulnerable persons (refugees, homeless persons, etc.)
- G. Restitution
  - 32. Remedies for housing rights violations: restitution
  - 33. Remedies: compensation
- H. Habitability
  - 34. Habitability: adequate health

- 35. Habitability: adequate privacy
- I. Homelessness
  - 36. Combating homelessness

The compilation presented in this report is not comprehensive. The absence of a particular law or the lack of references to specific countries, do not imply a subjective assessment. It implies that the researchers/authors have been unaware of it. The order in which the national legislation is presented does not indicate any subjective or qualitative ranking. Rather, States are arranged alphabetically.

This compilation is an effort to prepare an overview of relevant national legislation. The compilation is based on a study undertaken in 2001 by the Centre on Housing Rights and Evictions (COHRE), a non-governmental organization, under contract by UN-HABITAT. The current, 3<sup>rd</sup> Edition, version includes a number of additional material compiled by COHRE in December 2004 and December 2005. The excerpts presented are compiled through research and are in some cases based on second-hand information. Information and particularly presentations (wording) may thus not always appear *ad verbatim*. In other cases information have been informally translated.

The United Nations Housing Rights Programme appreciates comments of any kind regarding the content of this report. In particular, notifications about errors will be appreciated so that future versions of the report can be corrected. Moreover, comments that may serve to improve the content of the report and/or to extend its coverage will also be appreciated. Any such contributions should be sent to the following e-mail address: [housing.policy@unhabitat.org](mailto:housing.policy@unhabitat.org).



## National Housing Rights Legislation



### General Policy Statements on Housing

Several States have expressed general housing policies in national legislation. Following are legislative provisions that express general policy statements regarding the promotion and protection of housing rights, general policy statements regarding urban development, and general policy statements regarding rural development.

General policy statements regarding the promotion and protection of housing rights are not only enforceable legal standards in their own right, but can be used to determine the context in which national housing policy should be read and therefore can be used to interpret the legislative intent of more specific housing rights law.

Housing rights form a key component of any urban development scheme and have been recognized by the United Nations, for example in the Habitat Agenda adopted at the United Nations Conference on Human Settlements held in Istanbul in 1996, as an essential component of good urban governance.

Similarly, housing rights form a key component of rural development. Housing rights are particularly critical for the protection of agricultural workers and indigenous communities, especially in situations where land expropriation may otherwise result in homelessness, mass displacement or the destruction of sustainable communities.



## National Housing Rights Legislation



**Afghanistan**  
Constitution (1990)

### Article 17

The state shall promote construction to provide state and cooperative housing and help in the construction of private houses.



## National Housing Rights Legislation



### **Andorra** Constitution (1993)

#### Article 15

Inviolability of the dwelling shall be guaranteed. No one shall enter a dwelling or any other premises against the will of the owner or without a warrant, except in case of flagrant delicto. The privacy of communication shall also be guaranteed, except upon a reasoned court order.

#### Article 5

The Universal Declaration of Human Rights is binding in Andorra.





## National Housing Rights Legislation



**Angola**  
Constitution (1992)

### Article 44

The State shall guarantee the inviolability of the home and the secrecy of correspondence, with limitations especially provided for by law.



## National Housing Rights Legislation



### Antigua and Barbuda Constitution (1981)

#### Article 3

Whereas every person in Antigua and Barbuda is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, regardless of race, place of origin, political opinions or affiliations, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-

- c. protection for his family life, his personal privacy, the privacy of his home and other property and from deprivation of property without fair compensation,

#### Article 9

1. No property of any description shall be compulsorily taken possession of, and no interest in or right to or over property of any description shall be compulsorily acquired, except for public use and except in accordance with the provisions of a law applicable to that taking of possession or acquisition and for the payment of fair compensation within a reasonable time.
2. Every person having a interest in or right to or over property which is compulsorily taken possession of or whose interest in or right to or over any property is compulsorily acquired shall have the right of access to the High Court for-
  - a. the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right and the amount of any compensation to which he is entitled; and
  - b. the purpose of obtaining payment of that compensation:

Provided that if Parliament so provides in relation to any matter referred to in paragraph (a) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right to or over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.

3. The Chief Justice may make rules with respect to the practice and procedure of the High Court or any other tribunal or authority in relation to the jurisdiction conferred on the High Court by subsection (2) of this section or exercisable by the other tribunal or authority for the purposes of that subsection (including rules with respect to the time within which application or appeals to the High Court or applications to the other tribunals or authority may be brought).
4. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section-
  - a. to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right-
    - i. in satisfaction of any tax, rate or due;
    - ii. by way of penalty for breach of the law or forfeiture in consequence of breach of the law;
    - iii. as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
    - iv. in the execution of judgements or orders of a court in proceedings for the determination of civil rights or obligations;
    - v. in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or likely to be injurious to the health of human beings, animals or plants;
    - vi. in consequence of any law with respect to the limitation of actions;
    - vii. for so long as may be necessary for the purposes of any examination, investigation, trial or enquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relation to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out), and except so far as the provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a

democratic society;

- b. to the extent that the law in question makes provision for the taking of possession or acquisition of any of the following property (including and interest in or right to or over property), that is to say-
  - i. enemy property;
  - ii. property of a deceased person, a person of unsound mind or a person who had not attained the age of eighteen years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;
  - iii. the property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
  - iv. property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or by order of a court for the purposes of giving effect to the trust.
5. Nothing contained in or done under the authority of any law enacted by Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory taking of possession of any property, or the compulsory acquisition of any interest in or right or over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no monies have been invested other than monies provided by Parliament or any legislature established for the former colony or Associated State of Antigua.
6. For the purposes of this section, "use" is "public" if it is intended to result or results in a benefit or advantage to the public and, without prejudice to its generality, includes any use affecting the physical, economic, social or aesthetic well-being of the public.



## National Housing Rights Legislation



### Argentina Constitution (1994)

#### Article 14

The State shall grant the benefits of social security, which shall be complete and irrenounceable. In particular, the State shall establish: compulsory social security, which shall be in the charge of national or provincial entities with financial and economic autonomy, administered by the interested parties with the participation of the State, but there can be no overlapping of contributions; flexible retirement pay and pensions; full protection of the family; protection of the family welfare; economic compensation to families and access to decent housing.

#### Artículo 22

Aprobar o desechar tratados concluidos con las demás naciones y con las organizaciones internacionales y los concordatos con la Santa Sede. Los tratados y concordatos tienen jerarquía superior a las leyes. La Declaración Americana de los Derechos y Deberes del Hombre; la Declaración Universal de Derechos Humanos; la Convención Americana sobre Derechos Humanos; el Pacto Internacional de Derechos Económicos, Sociales y Culturales; el Pacto Internacional de Derechos Civiles y Políticos y su Protocolo Facultativo; la Convención sobre la Prevención y la Sanción del Delito de Genocidio; la Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial; la Convención sobre la Eliminación de todas las Formas de Discriminación contra la Mujer; la Convención contra la Tortura y otros Tratos o Penas Crueles, Inhumanos o Degradantes; la Convención sobre los Derechos del Niño: en las condiciones de su vigencia, tienen jerarquía constitucional, no derogan artículo alguno de la primera parte de esta Constitución y deben entenderse complementarios de los derechos y garantías por ella reconocidos. Solo podrán ser denunciados, en su caso, por el Poder Ejecutivo nacional, previa aprobación de las dos terceras partes de la totalidad de los miembros de cada Cámara. Los demás tratados y convenciones sobre derechos humanos, luego de ser aprobados por el Congreso, requerirán del voto de las dos terceras partes de la totalidad de los miembros de cada Cámara para gozar de la jerarquía constitucional.

[Establishing that international treaties, including the International Covenant on Economic, Social and Cultural Rights, are incorporated into, and indeed trump, domestic law.]



## National Housing Rights Legislation



### Armenia Constitution (1995)

#### Article 21

Everyone is entitled to privacy in his or her own dwelling. It is prohibited to enter a person's dwelling against his or her own will except under cases prescribed by law.

A dwelling may be searched only by court order and in accordance with legal procedures.

#### Article 28

Everyone is entitled to private property and inheritance. Foreign citizens and persons without citizenship shall not have the right to own land, except in cases prescribed by law. The owner may be deprived of private property only by a court in cases prescribed by law.

Private property may be alienated for the needs of society and the state only under exceptional circumstances, with due process of law, and with prior equivalent compensation.

#### Article 31

Every citizen is entitled to an adequate standard of living for himself or herself and his or her family, to adequate housing, as well as to the improvement of living conditions. The State shall provide the essential means to enable the exercise of these rights.



## National Housing Rights Legislation



### **Austria** Constitution (1929)

#### Article 11

In the following matters, legislation is a federal responsibility, and the execution that of the Länder <sup>(61)</sup>: ...

(3) people's housing <sup>(62)</sup>.



## National Housing Rights Legislation



**Bahrain**  
Constitution (1973)

### Article 9

(f) The state shall strive to provide housing for citizens with limited income.



## National Housing Rights Legislation



**Bangladesh**  
Constitution (1972)

### Article 15

It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing its citizens:

- (a) The provision of the basic necessities of life, including food, clothing, shelter, education and medical care.





## National Housing Rights Legislation



### **Belgium** Constitution (1994)

#### Article 23

Everyone has the right to lead a life consistent with human dignity. To that end, the laws, decrees or rules established under article 134 guarantee, taking into account the corresponding obligations, economic, social and cultural rights of which they determine the conditions for their implementation. These rights include, in particular,

- (3) The right to adequate housing.



## National Housing Rights Legislation



### **Bolivia** Constitution (1967)

#### Article 158

The State has the obligation to defend human capital by protecting the health of the population; it shall ensure the continuity of its means of livelihood and the rehabilitation of disabled persons; it shall also strive for the improvement of the living conditions of the family as a group.

The social security system shall be based on the principles of universal coverage, solidarity, uniformity of treatment, economy, timeliness and effectiveness, embracing the contingencies of illness, maternity, occupational hazards, disability, old age, forced shutdown, family allocations and social housing.

#### Article 199

The State shall protect the physical, mental and moral health of children, and shall uphold the rights of children to a home and to an education.



## National Housing Rights Legislation



### **Bosnia and Herzegovina** Constitution (1995)

#### Article 2 (1) Human Rights

Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. To that end, there shall be a Human Rights Commission for Bosnia and Herzegovina as provided for in Annex 6 to the General Framework Agreement.

#### Article 2 (2) International Standards

The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.

#### Article 2 (5) Refugees and Displaced Persons

All refugees and displaced persons have the right to freely return to their homes of origin. They have the right, in accordance with Annex 7 to the General Framework Agreement, to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void.



## National Housing Rights Legislation



### Brazil Constitution (1988)

#### Article 7

The following are rights of both urban and rural workers, in addition to other rights directed toward improving their lot in society:

- (IV) A minimum wage established by law and unified on a nationwide basis; such wages to be capable of meeting the basic necessities of life of the worker and his family, in terms of housing, food, education, health care, leisure, clothing, hygiene, transportation, and social security; it shall be subject to periodic readjustments that preserve its purchasing power and may not be used as a reference value for any purpose.

#### Article 21

It shall be the competence of the Federal Government to:

- (XX) establish guidelines for urban development, housing, infrastructure and transport.

#### Article 23

The Union, the States, the Federal District and the Municipalities have a mutual responsibility to:

- (IX) promote housing construction programmes and the improvement of living and basic sanitation conditions.

#### Article 182

The urban development policy, applied by the Municipal government, in conformity with the law, has the objective to order the complete development of the social functions of the city and to provide for the welfare of its inhabitants.

...

#### Article 183

An individual who possesses an urban area <sup>(art)</sup> of up to 250,000 square metres, for a continuous period of at least five (5) years, without claim for housing will be able to have domain over it unless he/she has another urban or rural property.

- (1) The registration of domain and the right to use will be given to a man or woman, or both, regardless of their civil status.
- (2) This right will not be given to the same individual more than once.

#### Article 187

Agricultural policy shall be planned and implemented pursuant to law, with regular participation in that process by the production sector — involving both rural producers and workers — as well as by the marketing, warehousing and transportation sectors, considering the following in particular:

- (VIII) Housing for the rural worker.

#### Article 200

The unitary health system has authority to perform the following functions, in addition to any other prerogatives, pursuant to law:

- (IV) Participate in formulating policy and implementing actions in the area of basic sanitation services.

#### Article 203

Social assistance shall be furnished to whomever may need it, regardless of whether they have contributed to social security. The objectives of this service are as follows:

- (II) Shelter for needy children and adolescents.



## National Housing Rights Legislation



### **Bulgaria**

Constitution (1991, as amended 2003 and 2005)

#### Article 17

- (1) The right to property and inheritance shall be guaranteed and protected by law.
- (2) Property shall be private and public.
- (3) Private property shall be inviolable.
- (4) The regime applying to the different units of state and municipal property shall be established by law.
- (5) Forcible expropriation of property in the name of state or municipal needs shall be effected only by virtue of a law, provided that these needs cannot be otherwise met, and after fair compensation has been ensured in advance.

#### Article 33

- (1) The home shall be inviolable. No one shall enter or stay inside a home without its occupant's consent, except in the cases expressly stipulated by law.
- (2) Entry or stay inside a home without the consent of its occupant or without the judicial authorities' permission shall be allowed only for the purposes of preventing an immediately impending crime or a crime in progress, for the capture of a criminal, or in extreme necessity.



## National Housing Rights Legislation



### **Burkina Faso** Constitution (1991)

#### Article 18

Education, instruction, formation, employment, social security, sport, housing, leisure, health, protection of motherhood and of infancy, assistance to the aged or handicapped persons and in social cases, artistic and scientific creation shall constitute the social and cultural rights recognized by the present Constitution which aims to promote them.



## National Housing Rights Legislation



### **Cambodia** Constitution (1993)

#### Article 31

The Kingdom of Cambodia shall recognise and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, and the Covenants and Conventions related to human rights, women's and children's rights.

#### Article 63

The State shall pay attention to market management and to helping ensure appropriate living conditions for people.

[\(63\)](#)



## National Housing Rights Legislation



### **Cape Verde** Constitution (1992)

#### Article 10 (International Relations)

1. The State of Cape Verde shall be guided in international relations by the principles of national independence, the respect for International Law and Human Rights, the equality amongst States, the non-intervention in the internal affairs of other States, the reciprocity of advantages, the cooperation with all other peoples and peaceful coexistence.

#### Article 66 (Right to private property)

1. Everyone shall have the right to private property, as well as its transfer in life or as a result of death, in accordance with the Constitution and the law.
2. The right to inheritance shall be guaranteed.
3. The requisition or expropriation for public reasons shall only take place in accordance with the law and always against the payment of a just compensation.

#### Article 69 (Dwelling)

Everyone shall have the right to a dwelling which should have a minimum of dignity and, for this purpose, the State shall undertake to promote, gradually and in conformity with the national economic development, the creation of the appropriate institutional, legal and infrastructural conditions, foment and support the initiatives of the local communities and of the population and stimulate private housing development and the access to privately owned housing.





## National Housing Rights Legislation



**China**  
Constitution (1982)

### Article 26(1)

... The State shall protect and improve the living environment and the ecological environment, and prevent and remedy pollution and other public hazards.



## National Housing Rights Legislation



### Colombia Constitution (1991)

#### Article 51

All Colombian citizens are entitled to live in dignity. The State will determine the conditions necessary to give effect to this right and will promote plans for public housing, appropriate systems of long-term financing, and community plans for the execution of these housing programmes.

#### Article 64

It is the duty of the State to promote the gradual access of agricultural workers to landed property in individual or associational form and to services involving education, health, housing, social security, recreation, credit, communications, the marketing of products, technical and management assistance with the purpose of improving the incomes and quality of life of the peasants.

#### Article 366

The general welfare and improvement of the population's quality of life are social purposes of the State. A basic objective of the State's activity will be to address unsatisfied public health, educational, environmental, and potable water needs. For this purpose, public social expenditures will have priority over any other allocation in the plans and budgets of the nation and the territorial entities.

#### Article 367

Home public services shall be provided directly by each municipality when the technical and economic characteristics of the service and the general benefits permit it and make it advisable and the departments shall carry out support and coordination functions.



## National Housing Rights Legislation



**Costa Rica**  
Constitution (1949)

### Article 65

The State shall promote the construction of low-cost housing and create a family homestead for workers.



## National Housing Rights Legislation



**Cuba**  
Constitution (1976)

### Article 42

The State sanctions the right won by the Revolution that all citizens, regardless of race, colour or national origin shall: ... Live in any sector, zone or district and stay in any hotel.



## National Housing Rights Legislation



**Cuba**  
Constitution (1992)

### Article 56

The home is inviolable. Nobody can enter the home of another against his will, except in those cases foreseen by law.



## National Housing Rights Legislation



### Democratic People's Republic of Korea Constitution (1972)

#### Article 25(3)

The State shall provide all working people with every condition for obtaining food, clothing and housing.

#### Article 28

The State increases the role of the country and strengthens its guidance and assistance to the countryside in order to eliminate the difference between town and country and the class distinction between the working class and peasantry. The state undertakes the building of production facilities of the cooperative farms and modern houses in the countryside at its expense.

#### Article 69

The State provides functional modern houses and hostels for the working people. The State builds modern rural houses at its expense and offers them free for the use of co-operative farmers.



## National Housing Rights Legislation



### **Democratic Republic of Congo** Constitution (1992)

#### Article 34(1)

The State is the guarantor of public health. Every citizen shall have the right to a level of life sufficient to assure his health, his well-being and that of his family, notably food, clothing, shelter, medical care as well as necessary social services.



## National Housing Rights Legislation



### **Dominica** Constitution (1978)

#### Section 1

Whereas every person in Dominica is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:

- (c) Protection for the privacy of his home and other property and from deprivation of property without compensation.





## National Housing Rights Legislation



### **Dominican Republic** Constitution (1994)

#### Article 15

With the aim of strengthening its stability and well-being and its moral, religious and cultural life, the family shall receive the broadest possible protection from the State. ...

- (b) The establishment of every Dominican home on land or with improvements belonging to the occupant is declared to be of high social interest. To this end, the State shall encourage the development of public credit on advantageous terms, intended to make it possible for all Dominicans to possess a comfortable and sanitary home.

#### Article 17

The State shall encourage the progressive development of social security so that every person shall be able to enjoy adequate protection against unemployment, sickness, disability and old age.

The State shall also offer social assistance to the poor. This assistance shall consist of food, clothing, and, in so far as possible, adequate housing.



## National Housing Rights Legislation



### East Timor Constitution (2002)

#### Section 9 (International law).

1. The legal system of East Timor shall adopt the general or customary principles of international law.
2. Rules provided for in international conventions, treaties and agreements shall apply in the internal legal system of East Timor following their approval, ratification or accession by the respective competent organs and after publication in the official gazette.
3. All rules that are contrary to the provisions of international conventions, treaties and agreements applied in the internal legal system of East Timor shall be invalid.

#### Section 37 (Inviolability of home and correspondence)

1. Any person's home and the privacy of his or her correspondence and other means of private communication are inviolable, except in cases provided for by law as a result of criminal proceedings.
2. A person's home shall not be entered against his or her will, except under the written order of a competent judicial authority and in the cases and manner prescribed by law.
3. Entry into any person's home at night against his or her will is clearly prohibited, except in case of serious threat to life or physical integrity of somebody inside the home.

#### Section 58 (Housing).

Everyone has the right to a house, both for himself or herself and for his or her family, of adequate size that meets satisfactory standards of hygiene and comfort and preserves personal intimacy and family privacy.



## National Housing Rights Legislation



### **Ecuador** Constitution (1998)

#### Article 23

Without prejudice to the rights established in this Constitution and the effective international instruments, the State will recognize and guarantee to the people the following rights:

- (20) The right to a quality of life that assures health, food and nutrition, potable water, a clean environment, social education, work, use, recreation, housing, dress and other necessary social services.

#### Art. 32

- In order to make effective the right to housing and the conservation of the environment, the municipalities may expropriate, reserve and control areas for future development, in accordance with the law.

The State will promote housing programmes in the public interest.



## National Housing Rights Legislation



**Egypt**  
Constitution (1971)

### Article 44

Homes shall have their sanctity and they may not be entered or inspected except by a causal judicial warrant as prescribed by the law.



## National Housing Rights Legislation



### **El Salvador** Constitution (1982)

#### Article 51

The law shall specify what enterprises and establishments, due to special conditions, are required to provide a worker and his family with suitable housing, schools....and other social services and attention necessary for their well-being.

#### Article 106

Expropriation will proceed because of public utility or social interest, legally proven and after a just indemnification. When expropriation is caused by the necessities of war or public disaster or if it is for the purpose of supplying water or electric power or for the construction of housing or roads, compensation need not be made in advance.

#### Article 119

Housing construction is declared to be a matter of social interest. The state shall endeavour to permit the greatest possible number of Salvadorian families to become homeowners. It shall undertake to see that every farm owner shall provide a sanitary and comfortable home for his workers and tenants, and shall provide facilities to enable small owners to do so.



## National Housing Rights Legislation



### Equatorial Guinea Constitution (1982)

#### Article 20

Every person enjoys the following rights:

- (13) The right to a standard of living which ensures health, nutrition, education, clothing, housing, medical care and necessary social services.



## National Housing Rights Legislation



### **Estonia** Constitution (1992)

#### Article 32 [Property]

- (1) The property rights of everyone are inviolable and enjoy equal protection. No property shall be expropriated without the consent of the owner except in cases of public interest, in accordance with procedures determined by law, and in exchange for equitable and appropriate compensation. Anyone whose property has been expropriated without his or her consent shall have the right to appeal to a court and to contest the expropriation, and the nature and amount of compensation.

#### Article 33

The home is inviolable. No one's dwelling, real or personal property under his or her control, or place of employment shall be forcibly entered or searched, except in the cases and pursuant to procedure provided by law, to protect public order, health or the rights and freedoms of others, to prevent a criminal offence, to apprehend a criminal offender, or to ascertain the truth in a criminal proceeding.



## National Housing Rights Legislation



### **Ethiopia** Constitution (1994)

#### Article 40. The Right to Property

- (5) Ethiopian pastoralists have a right to free land for grazing and cultivation as well as a right not to be displaced from their own lands. This implementation shall be specified by law
- (7) Every Ethiopian shall have the full right to the immovable property he builds on the land and to the improvements he brings about on the land by his labor or capital. This right shall include the right to alienate, to bequeath, and where right of use expires, to remove his property, transfer his title, or claim compensation for it. Particulars shall be determined by law.
- (8) Government has the power to expropriate, in the public interest, private property. In all such cases, government shall pay compensation in advance commensurate to the value of the expropriated property.

#### Article 44. Environmental Rights

- (1) All persons have the right to a clean and healthy environment.
- (2) All persons who have been displaced or whose livelihoods have been adversely affected as a result of State programmes have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance.





## National Housing Rights Legislation



**Fiji**  
Constitution (2000)

### Article 38(4)

Every person has the right of access, without discrimination on a prohibited ground, to shops, hotels, lodging-houses, public restaurants, places of public entertainment, public transport services, taxis and public places.

### Article 44(1)

The Parliament must make provision for programs designed to achieve for all groups or categories of persons who are disadvantaged effective equality of access to:

- (b) land and housing.



## National Housing Rights Legislation



**Finland**  
Constitution (2000)

### Section 19(4)

The public authorities shall promote everyone's right to housing and the opportunity to arrange their own housing.



## National Housing Rights Legislation



### Germany

Constitution of Bavaria (1946)<sup>(68)</sup>

#### Article 106. Right to Housing, Inviolability of the Home

- (1) Each resident of Bavaria has a claim for adequate housing.<sup>(64)</sup>
- (2) The responsibility for the construction of affordable social housing units is the duty of States and local governments.
- (3) The home is for everyone a free place and inviolable.<sup>(65)</sup>



## National Housing Rights Legislation



**Germany**  
Constitution of Berlin (1950)<sup>(69)</sup>

Article 19. Right to Living Space, Inviolability of the Home

(1) Everyone has the right to living space.



## National Housing Rights Legislation



### Germany

Constitution of Brandenburg (1992)<sup>[20]</sup>

#### Article 47. Housing

- (1) The State is obliged, within the framework of its powers, to provide for the realization of the right to adequate housing, in particular through the advancement of housing property, through measures of social housing construction, rental protection and housing subsidies.
- (2) The eviction from a dwelling shall only be carried out if alternative accommodation is provided.



## National Housing Rights Legislation



**Germany**

Constitution of Bremen (1947)<sup>(21)</sup>

### Article 14. Claim for Housing, Inviolability of the Home

- (1) Each resident of Bremen has a claim for adequate housing. It is the responsibility of the State and local governments to advance the realization of this claim.



## National Housing Rights Legislation



### Germany

Constitution of Mecklenburg-Vorpommern (1993)<sup>[72]</sup>

#### Article 17. Employment, Economy and Social Matters

- (3) State, local and municipal governments strive to ensure that everyone will have access to adequate housing space at their disposal. They will support, in particular, the construction of housing and the maintenance of existing housing space. They ensure everyone in the event of an emergency situation, basic shelter.



## National Housing Rights Legislation



**Germany**

Constitution of Sachsen (1992)<sup>[73]</sup>

### Article 7

- (1) The State recognizes the right of everyone to a dignified life, in particular in terms of employment, to adequate housing, to adequate welfare assistance, to social security and to education as an objective of the State.





## National Housing Rights Legislation



### Germany

Constitution of Sachsen-Anhalt (1992)<sup>[24]</sup>

#### Article 40. Housing

- (1) The State and local authorities have responsibilities to ensure support for the construction of housing, the maintenance of existing housing supplies and through other measures to guarantee dignified living space and adequate living conditions for everyone.
- (2) The State and the local authorities shall ensure that no one becomes homeless.



## National Housing Rights Legislation



### Germany

Constitution of Thüringen (1994)<sup>(25)</sup>

#### Article 15. State Objective: Adequate Housing

It is the permanent responsibility of the State to ensure that adequate housing is made available. In order to realize this objective, the State and local authorities will advance the construction and provision of housing within the contexts of social cooperatives and the private sphere.



## National Housing Rights Legislation



### Ghana Constitution (1993)

#### Article 18

- (1) Every person has the right to own property either alone or in association with others.
- (2) No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of the rights or freedoms of others



## National Housing Rights Legislation



**Greece**  
Constitution (1975)

Art. 21(4)

The provisions of housing to those who are homeless or live in inadequate housing conditions shall be the subject of special attention by the State.



## National Housing Rights Legislation



### Guatemala Constitution (1985)

#### Article 67. Protection of native agricultural lands and cooperatives

The lands of the cooperatives, native communities or any other forms of communal possession or collective or agrarian ownership, as well as the family heritage and popular housing shall enjoy the special protection of the State, credit assistance and preferential technology which may guarantee their ownership and development in order to ensure an improved quality of life to all inhabitants.

#### Article 105. Workers' Housing

Through specific entities, the State will support the planning and construction of housing projects, establishing adequate systems of financing that would make it possible to involve the different programmes so that the workers may opt for adequate housing and meet health requirements. The owners of enterprises are obliged to make available to their workers — in cases established by law — the housing units that meet the above-mentioned requirements.

#### Article 119

The following are basic obligations of the state:

- (g) To promote on a priority basis the construction of popular housing through systems of financing so that a larger number of Guatemalan families may have title to it. When resulting or cooperatively-held housing is involved, the system of land tenure may be different.



## National Housing Rights Legislation



**Guyana**  
Constitution (1980)

### Article 26

Every citizen has the right to proper housing accommodation.



## National Housing Rights Legislation



**Haiti**  
Constitution (1987)

### Article 22

The State recognizes the right of every citizen to decent housing, education, food and social security.



## National Housing Rights Legislation



### Honduras Constitution (1982)

#### Article 118

The homestead shall be the subject of special legislation designed to protect and further it.

#### Article 123

All children shall enjoy the benefits of social security and education. Every child shall have the right to grow and develop in good health, for whom special care shall be given during the prenatal period, as much for the child as for the mother, both being entitled to food, housing, education, recreation and adequate medical services.

#### Article 141

The law shall determine which employers, according to their capital and the total number of workers, shall be required to provide them and their families with educational, health, housing and other services.

#### Article 178

The right of Hondurans to dignified housing is recognized. The State will formulate and exercise housing programs in the social interest. The law will regulate the renting of housing and premises, the use of urban areas and construction, in accordance with the general interest.

#### Article 179

The State will promote, support and regulate the creation of systems and mechanisms for the use of internal and external resources for the solution of the housing problem.

#### Article 180

All internal and external credits and loans obtained by the State for housing shall be regulated by law for the benefit of the ultimate user of the credit.

#### Article 181

The social fund for housing is hereby created. Its purpose shall be to develop housing in urban and rural areas. A special law shall regulate its organization and functioning.

#### Article 345

Agrarian reform is an essential part of the overall development strategy of the nation and therefore any other economic and social policies that the government may approve shall be formulated and executed in harmony with it, especially those related, inter alia, to education, housing, employment, infrastructure, marketing and technical and credit assistance.





## National Housing Rights Legislation



**Hungary**  
Constitution (1997)

### Article 17

The Republic of Hungary sees to the wants of the needy through a long line of measures. [661](#)



## National Housing Rights Legislation



### Iran (Islamic Republic of) Constitution (1979)

#### Article 3

In order to attain the objectives specified in article 2, the government of the Islamic Republic of Iran has the duty of directing all its resources to the following goals:

- (12) the planning of a correct and just economic system, in accordance with Islamic criteria, in order to create welfare, eliminate poverty, and abolish all forms of deprivation with respect to food, housing, work, health care, and the provision of social insurance for all.

#### Article 31

A suitable dwelling, according to need, is the right of every Iranian person and family. The government is responsible for laying the groundwork to accomplish this, with the first consideration given to those who are in need, in particular villagers and labourers.

#### Article 43

The economy of the Islamic Republic of Iran, with its objectives of achieving the economic independence of the society, uprooting poverty and deprivation and fulfilling human needs in the process of development while preserving human liberty, is based on the following criteria:

- (1) The provision of basic necessities for all citizens: housing, food, clothing, hygiene, medical treatment, education and the necessary facilities for the establishment of a family.



## National Housing Rights Legislation



### Jordan Constitution (1984)

#### Article 10

Dwellings are inviolable and may not be entered except in the circumstances provided for by law and in the manner specified therein.

#### Article 11

No one shall expropriate the property of another person except in the public interest.



## National Housing Rights Legislation



### **Kyrgyzstan** Constitution (1993)

#### Article 33

Citizens of the Kyrgyz Republic shall have the right to housing.

The State promotes the fulfillment of the right to housing by giving and selling state-owned housing, by encouragement of individual house building.



## National Housing Rights Legislation



### Lao People's Democratic Republic Constitution (1991)

#### Article 29

The right of Lao citizens in their bodies and houses are inviolable.



## National Housing Rights Legislation



**Lebanon**  
Constitution (1926)

[Article 14 \[Home\]](#)

The citizen's place of residence is inviolable. No one may enter it except in the circumstances and manners prescribed by law.



## National Housing Rights Legislation



### **Lesotho** Constitution (1993)

#### Article 11. Right to respect for private and family life

(1) Every person shall be entitled to respect for his private and family life and his home.

#### Article 34. Economic opportunities

Lesotho shall adopt policies which encourage its citizens to acquire property including land, houses, tools and equipment; and shall take such other economic measures as the State shall consider affordable.



## National Housing Rights Legislation



**Mali**  
Constitution (1992)

### Article 16

Education, instruction, formation, work, housing, leisure, health and social protection shall constitute recognized rights.





## National Housing Rights Legislation



### Mexico Constitution (1917)

#### Article 4

Every family has the right to enjoy decent and proper housing. The law shall establish the instruments and necessary supports to reach said goal.

#### Article 123

(Sec. A, Subsec. XII) Every agricultural, industrial, mining or other sort of enterprise shall be obliged, as may be laid down in the laws governing this matter, to provide comfortable and hygienic housing for its workers. This obligation shall be met by means of the contributions made by the enterprise to a national housing fund in order to build up deposits in favour of their workers and establish a financing system enabling cheap credit to be granted to them sufficient for them to become owners of such housing. It is considered that it would be in the public interest to adopt a law establishing a body made up of representatives of the Federal Government, the workers and the employers to administer the resources of the national housing fund. The law in question shall lay down the forms and procedures to be followed by the workers if they wish to become owners of the housing aforementioned.

(Sec. A, Subsec. XXX) Cooperative societies for building cheap and hygienic dwellings intended to be bought by workers on an instalment plan shall be deemed to be of public interest.

(Sec. B(f), Subsec. XI) [Lays down the right to housing for workers employed by the Federal Authorities and the Government of the Federal District.]<sup>126</sup>



## National Housing Rights Legislation



### **Mongolia** Constitution (1992)

#### Article 10 [Foreign Policy, Treaties]

- (1) Mongolia adheres to the universally recognized norms and principles of international law and pursues a peaceful foreign policy.
- (2) Mongolia fulfills in good faith its obligations under international treaties to which it is a Party.
- (3) The international treaties to which Mongolia is a Party become effective as domestic legislation upon the entry into force of the laws on their ratification or accession.

#### Article 16

- (13). Privacy of citizens, their families, correspondence, and homes are protected by law.



## National Housing Rights Legislation



### **Mozambique** Constitution (1990)

#### Article 104

The home as well as the correspondence and other forms of private communication of citizens shall be inviolable, except in such cases as specifically stipulated by law.



## National Housing Rights Legislation



**Namibia**  
Constitution (1990)

### Article 13. Privacy

- (1) No persons shall be subject to interference with the privacy of their home, correspondence or communications.



## National Housing Rights Legislation



### Nepal Constitution (1990)

#### Article 22

Except as provided by law, the privacy of the person, house, property, document, correspondence or information of anyone is inviolable.

#### Article 26

- (1) The State shall adopt a policy which is directed towards the upliftment of the standard of living of the general public through the development of the basic structures like public education, health, housing and employment of the general public of all the regions by making equitable distribution of investment of the economic resources for the balanced development in the various geographical region of the country.



## National Housing Rights Legislation



**Netherlands**  
Constitution (1984)

Art. 22.2

The public authorities have the duty of supplying proper housing.



## National Housing Rights Legislation



### Nicaragua Constitution (1987)

#### Article 26

All persons have the right to:

- (1) privacy and the privacy of their family;
- (2) the inviolability of their home, correspondence, and communications;...

#### Article 64

Nicaraguans have the right to decent, comfortable and safe housing that guarantees familial privacy. The State shall promote the fulfilment of this right.



## National Housing Rights Legislation



### **Nigeria** Constitution (1989)

#### Article 16

(2) The State shall direct its policy toward ensuring:

- (d) that suitable and adequate shelter, food, water supply, reasonable national minimum living wage, old age and pensions, unemployment, and sick benefits and welfare for the disabled are provided for all citizens.





## National Housing Rights Legislation



### **Pakistan** Constitution (1990)

#### Article 38

The State shall:

- (d) provide basic necessities of life such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment.



## National Housing Rights Legislation



### **Panama** Constitution (1978)

#### Article 109

The State shall establish a national housing policy with the purpose of ensuring the enjoyment of this social right to all of the population, especially low-income groups.



## National Housing Rights Legislation



### Papua New Guinea Constitution (1975)

#### Article 53<sup>(22)</sup>

... [P]ossession may not be compulsorily taken of any property, and no interest or right over property may be compulsorily acquired except...[in certain circumstances].

- (20) [Where acquisition is permitted, just compensation must be made on just terms determined by the government.]



## National Housing Rights Legislation



### Paraguay Constitution (1992)

#### Article 57

About Senior Citizens: Every senior citizen has the right to receive full protection by his family, society, and the State. State organizations will promote the well-being of senior citizens by providing them with social services to meet their needs for food, health, housing, culture, and leisure.

#### Article 59

About Family Property: Family property is hereby recognized as an institution of a social interest. The law will implement a system under which it will operate. Family property will consist of the family house or estate and its furniture and working tools, which cannot be subjected to any attachment.

#### Article 100

About the Right to Housing:

- (1) Every inhabitant of the Republic has the right to decent housing facilities.
- (2) The State will establish conditions conducive to the implementation of this right and will promote housing projects of social interest specially designed for low-income families through adequate methods of financing.



## National Housing Rights Legislation



**Peru**  
Constitution (1993)

### Article 2

All persons have the right ...

- VIII. To the inviolability of the home. No one may enter the home or make investigations or entries in the public register without authorization from the person living in the home or judicial mandate, except for crimes in the act of commission or very serious possibility of their immediate perpetration. Exceptions based on health or serious risk of harm are regulated by law.



## National Housing Rights Legislation



### Philippines Constitution (1987)

#### Article 13

- (1) Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good. To this end, the State shall regulate the acquisition, ownership, use and disposition of property and its increments.
- (9) The State shall by law, and for the common good, undertake, in co-operation with the private sector, a continuing programme of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centres and resettlement areas. It shall also promote adequate employment opportunity to such citizens. In the implementation of such programs the State shall respect the rights of small property owners.
- (10) Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner. No resettlement of urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be resettled.



## National Housing Rights Legislation



### **Poland** Constitution (1997)

#### Article 49

The freedom and privacy of communication shall be ensured. Any limitations thereon may be imposed only in cases and in a manner specified by statute.

#### Article 75

- (1) Public authorities shall pursue policies conducive to satisfying the housing needs of citizens, in particular combating homelessness, promoting the development of low-income housing and supporting activities aimed at acquisition of a home by each citizen.
- (2) Protection of the rights of tenants shall be established by statute.



## National Housing Rights Legislation



### Portugal

Constitution (1976, revised 1997)

#### Article 65

##### Housing and urban planning

1. Everyone has the right, both personally and for his or her family, to a dwelling of adequate size, that meets satisfactory standards of hygiene and preserves personal and family privacy.
2. In order to ensure the right to housing, it is the duty of the State to:
  - a. Draw up and implement a policy for housing as a part of general national planning and to support plans for urban areas that guarantee an adequate network of transport and social facilities;
  - b. To promote, in conjunction with local authorities, the construction of economic and social housing;
  - c. Promote private building, when in the public interest, and access to privately owned or rented dwellings.
  - d. Encourage and support the initiatives of local communities for the resolution of their housing problems and for promoting the establishment of housing co-operatives and their own building projects;
3. The State shall adopt a policy for the institution of a system of rents that are compatible with family incomes and for individual ownership of housing.
4. The State, the autonomous regions and the local authorities shall determine the regulations on occupancy, use and transformation of urban land, specifically by way of planning instruments, within the framework of laws relating to national planning and urban planning and shall compulsorily acquire such land as is necessary to satisfy the purposes of urban public utility.
5. Interested parties shall be guaranteed participation in the drawing up of urban planning instruments and any other instruments for physical planning of the territory.

#### Article 72

##### Old age

1. Old people have the right to economic security and to conditions of housing and of family and community life that respect their personal autonomy and prevent or surmount their isolation and marginal position in society.
2. The policy for the old shall also include economic, social and cultural measures that aimed at providing old people with opportunities for self-fulfilment through active participation in the life of the community.





## National Housing Rights Legislation



**Republic of Korea**  
Constitution (1948)

### Article 35

- (3) The State shall endeavour to ensure comfortable housing for all citizens through housing development policies and the like.



## National Housing Rights Legislation



### Russian Federation Constitution (1993)

#### Article 25

Dwellings are inviolable. No one is entitled to enter a dwelling against the wishes of the persons residing there except in cases prescribed by federal law or on the basis of a judicial decision.

#### Article 36

- (1) Citizens and their associations are entitled to hold land in private ownership.
- (2) Owners freely possess, utilize and dispose of land and other natural resources provided that this does not damage the environment and does not violate the rights and legitimate interests of others.
- (3) The conditions and procedure for the use of land are defined on the basis of federal law.

#### Article 40

- (1) Each person has the right to housing. No one may be arbitrarily deprived of housing.
- (2) Bodies of State power and bodies of local self-government encourage housing construction and create conditions for the exercise of the right to housing.
- (3) Housing is provided free or at affordable cost to low-income and other citizens indicated in the law who require housing from the state, municipal and other housing stocks in accordance with the norms prescribed by law.



## National Housing Rights Legislation



### **Saint Lucia** Constitution (1978)

#### Preamble

Whereas the people of Saint Lucia ...

- (e) Realize that human dignity requires respect for spiritual values; for private family life and property; and the enjoyment of an adequate standard of economic and social well-being dependent upon the resources of the State.



## National Housing Rights Legislation



### Sao Tome and Principe Constitution (1975)

#### Article 48. Housing and Environment

- (1) All have the right to housing and to an environment of human life and the duty to defend it.
- (2) It is incumbent upon the state to plan and execute a housing policy inserted in the plans for zoning of the territory.



## National Housing Rights Legislation



### Senegal Constitution (2001)

#### Preamble

The sovereign people of Senegal ... Affirm: their adherence to the Declaration of Human Rights of 1789 as well as to the international instruments adopted by the United Nations and the Organization of African Unity, in particular the Universal Declaration of Human Rights of 10 December 1948, the Convention on the Elimination of all Forms of Discrimination Against Women of 18 December 1979, the Convention on the Rights of the Child of 20 November 1989 and the African Charter on Human and Peoples' Rights of 27 June 1981;

#### Article 98

Treaties or agreements duly ratified shall, upon their publication, have an authority superior to that of the laws, subject, for each treaty and agreement, to its application by the other party.

#### Article 16

The home shall be inviolable. A house search may not be ordered except by a judge or another authority designated by law. Searches may be conducted only in the form prescribed by these authorities. Measures impairing or restricting the inviolability of the home may be taken only in order to provide against a common danger or to protect persons in danger of death. Such measures may also be taken, pursuant to law, in order to protect public order against impending threat and especially to combat the risks of epidemics or to protect youth in danger.



## National Housing Rights Legislation



### **Seychelles** Constitution (1993)

#### Article 34

The State recognizes the right of every citizen to adequate and decent shelter conducive to health and well-being and undertakes either directly or through or with the co-operation of public or private organizations to facilitate the effective realization of this right.



## National Housing Rights Legislation



### Slovakia Constitution (1992)

#### Article 20

- (1) Everyone has the right to own property. Property rights of all owners shall be uniformly construed and equally protected by law. The right of inheritance is guaranteed.
- (2) For the purposes of safeguarding the needs of the society, the interests of the general public, and the advancement of the national economy, the law shall establish certain property, (including that defined in article 4) as the exclusive property of the State, the municipality or specific corporate bodies. In addition, the law can specify property which may be owned only by individual citizens or corporations residing in the Slovak Republic.
- (3) Ownership limits. Property may not be misused to cause injury to another person or in contradiction to the public interests protected by law. The exercise of property rights must not be detrimental to the health of other people, wild life, cultural sites or the environment beyond the standards fixed by law.
- (4) Expropriation or restrictions on property rights shall be imposed only to the extent legally justified for the protection of the public interest and shall be justly compensated.

#### Article 21 [Inviolability of the Home]:

- (1) A person's home is inviolable. It must not be entered without the resident's consent.
- (2) A house search is admissible only in connection with criminal proceedings and only on the basis of the judge's written and substantiated order. The method of carrying out a house search will be set out in a law.
- (3) Other infringements upon the inviolability of one's home can be permitted by law only if this is inevitable in a democratic society in order to protect people's lives, health, or property, to protect the rights and liberties of others, or to ward off a serious threat to public order. If the home is used also for business or to perform some other economic activity, such infringements can be permitted by law also when this is unavoidable in meeting the tasks of public administration.

#### Article 39

- (1) Citizens shall be entitled to adequate material security in their old age, as well as in cases of disability, and death of the family's principal provider.
- (2) Any person suffering material hardship, shall have the right to such assistance as may be necessary to secure his or her fundamental standard of life.
- (3) Further details of rights defined in sections (1) and (2) of this Article shall be provided by law.

#### Article 11 [Human Rights]

International treaties on human rights and basic liberties that were ratified by the Slovak Republic and promulgated in a manner determined by law take precedence over its own laws, provided that they secure a greater extent of constitutional rights and liberties.



## National Housing Rights Legislation



**Slovenia**  
Constitution (1991)

### Article 78

The State shall create the conditions necessary to enable each citizen to obtain proper housing.





## National Housing Rights Legislation



### South Africa Constitution (1996)

#### Article 14. Privacy

Everyone has the right to privacy, which includes the right not to have their person or home searched;

#### Article 25. Property

- (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
- (2) Property may be expropriated only in terms of law of general application for a public purpose or in the public interest; and subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
- (3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including the current use of the property; the history of the acquisition and use of the property; the market value of the property; the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and the purpose of the expropriation.
- (4) For the purposes of this section the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and property is not limited to land.
- (5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
- (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
- (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
- (8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).
- (9) Parliament must enact the legislation referred to in subsection (6).

#### Article 26. Housing

- (1) Everyone has the right to have access to adequate housing.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

#### Article 27. Health care, food, water and social security

- (1) Everyone has the right to have access to health care services, including reproductive health care;
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
- (3) No one may be refused emergency medical treatment.

#### Article 28. Children

- (1) Every child has the right to ... shelter....
- (2) A child's best interests are of paramount importance in every matter concerning the child.

(3) In this section “child” means a person under the age of 18 years.



## National Housing Rights Legislation



### Spain Constitution (1978)

#### Art. 47

All Spaniards have the right to enjoy decent and adequate housing. The authorities shall promote the conditions necessary and establish pertinent norms to make this right effective, regulating the use of land in accordance with the general interest to prevent speculation. The community shall share in the increased values generated by urban activities of public bodies.

#### Art. 148

- (1) The Autonomous Communities can obtain competence in the following areas: ...
  - (3a) Regulation of land, urbanisation and housing.



## National Housing Rights Legislation



**Sri Lanka**  
Constitution (1977)

### Article 27

The State is pledged to establish in Sri Lanka a democratic socialist society, the objectives of which includes:

- (2) (c) The realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities.



## National Housing Rights Legislation



**Suriname**  
Constitution (1987)

### Article 49

A housing plan shall be determined by law, aimed at the procurement of a sufficient number of affordable houses and state control of the use of real estate for public housing.



## National Housing Rights Legislation



### Syrian Arab Republic Constitution (1973)

[Article 31 \[Home\]](#)

Homes are inviolable. They may not be entered or searched except under conditions specified by law.



## National Housing Rights Legislation



**Sweden**  
Constitution (1978)

### Art. 2, Sec. 1

The personal, economic and cultural welfare of the individual shall be fundamental aims of the activities of the community. In particular, it shall be incumbent upon the community to secure the right to work, to housing and to education and to promote social care and security, as well as a favourable living environment.



## National Housing Rights Legislation



### Switzerland Constitution (1874)

#### Article 34(6).

1. The Confederation shall take measures aimed at encouraging the construction of housing, especially through a lowering of costs, and providing the opportunity for owning a dwelling or house. Federal legislation shall determine the conditions for giving assistance grants.
2. The Confederation shall have the following particular powers:
  - (a) to facilitate the obtaining and development of sites for housing construction;
  - (b) to support efforts aimed at improving housing and environmental conditions for families, persons with limited earning capacity, the elderly, the disabled, and persons in care;
  - (c) to research into the housing market and into building methods, and to encourage rationalization in building; and
  - (d) to ensure that capital is obtained for housing construction.
3. The Confederation is authorised to decree the necessary legal provisions for the development of sites intended for housing construction, as well as for rationalization in building.
4. Insofar as the nature of these measures exceeds the powers of the Confederation alone, the Cantons shall be called on to help carry them out.
5. The Cantons and other interested groups shall be consulted during the drafting of implementing legislation.





## National Housing Rights Legislation



**Tonga**  
Constitution (1875)

### Article 16

It shall not be lawful for anyone to enter forcibly the houses or premises of another or to search for anything or to take anything the property of another except according to law: And should any person lose any property and believe it to be concealed in any place whether house or premises it shall be lawful for him to make an affidavit before a magistrate that he believes it to be concealed in that place and he shall describe particularly the property so concealed and the place in which he believes it to be concealed and the magistrate shall issue a search warrant to the police to search for the property according to the affidavit so made. (Amended by Act 7 of 1967.)



## National Housing Rights Legislation



**Turkey**  
Constitution (1982)

### Article 56

Everyone has the right to live in a healthy and stable environment.<sup>(78)</sup>

### Article 57

The State shall take measures to meet the needs for housing, within the framework of a plan which takes into account the characteristics of cities and environmental conditions and supports community housing projects.



## National Housing Rights Legislation



### Ukraine Constitution (1996)

#### Article 47

- (1) Everyone has the right to housing. The State creates conditions that enable every citizen to build, purchase as property, or to rent housing.
- (2) Citizens in need of social protection are provided with housing by the State and bodies of local self-government, free of charge or at a price affordable for them, in accordance with the law.
- (3) No one shall be forcibly deprived of housing other than on the basis of the law pursuant to a court decision.

#### Article 48

- (1) Everyone has the right to a standard of living sufficient for himself or herself and his or her family that includes adequate nutrition, clothing and housing.

#### Article 55

- (1) Human and citizens' rights and freedoms [including the right to housing enumerating in Articles 47 and 48 of the Constitution] are protected by the court.
- (2) Everyone is guaranteed the right to challenge in court the decisions, actions or omission of bodies of state power, bodies of local self-government, officials and officers.
- (3) Everyone has the right to appeal for the protection of his or her rights to the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine.
- (4) After exhausting all domestic legal remedies, everyone has the right to appeal for the protection of his or her rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organisations of which Ukraine is a member or participant.
- (5) Everyone has the right to protect his or her rights and freedoms from violations and illegal encroachments by any means not prohibited by law.

#### Article 56

- (1) Everyone has the right to compensation, at the expense of the State or bodies of local self-government, for material and moral damages inflicted by unlawful decisions, actions or omission of bodies of state power, bodies of local self-government, their officials and officers during the exercise of their authority.



## National Housing Rights Legislation



**Uruguay**  
Constitution (1918)

### Article 45

Every inhabitant of the Republic has the right to decent housing. The law shall seek to ensure hygienic and economical housing by facilitating the purchase thereof and stimulating the investment of private capital to this end.



## National Housing Rights Legislation



### Venezuela Constitution (1999)

#### Artículo 23

Los tratados, pactos y convenciones relativos a derechos humanos, suscritos y ratificados por Venezuela, tienen jerarquía constitucional y prevalecen en el orden interno, en la medida en que contengan normas sobre su goce y ejercicio más favorables a las establecidas por esta Constitución y la ley de la República, y son de aplicación inmediata y directa por los tribunales y demás órganos del Poder Público.

[Establishing that international human rights treaties are incorporated into, and indeed trump, domestic law.]

#### Article 82

Everyone has a right to adequate housing, which is secure, comfortable, hygienic, with basic essential services that include an environment which humanizes family relations, neighborhoods and communities. The progressive realization of this right is an obligation which is divided between citizens and the State in all respects.

The State shall give priority to families and shall guarantee the existence of measures and access to social policies for credit and for the construction, acquisition or improvement of housing, especially to families with limited resources.



## National Housing Rights Legislation



### **Viet Nam** Constitution (1992)

#### Article 58

Citizens have the rights to own legally-earned income, savings, homes, means of activities and production, capital and other assets of business or other economic organizations. The state protects citizens' legal rights to ownership and inheritance.

#### Article 62

Citizens have the right to build homes according to a plan and law. The rights of tenants and landlords shall be protected by law.



## National Housing Rights Legislation



### **Zambia** Constitution (1991)

#### Article 11 [Fundamental Rights and Freedoms]

It is recognized and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, color, creed, sex or marital status, but subject to the limitations contained in this Part, to each and all of the following, namely: ...

- (d) protection for the privacy of his home and other property and from deprivation of property without compensation;

and the provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

#### Article 17 [Privacy of Home and Other Property]

- (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.



## National Housing Rights Legislation



### **Andorra** Constitution (1993)

#### Article 15

Inviolability of the dwelling shall be guaranteed. No one shall enter a dwelling or any other premises against the will of the owner or without a warrant, except in case of flagrant delicto. The privacy of communication shall also be guaranteed, except upon a reasoned court order.

#### Article 5

The Universal Declaration of Human Rights is binding in Andorra.





## National Housing Rights Legislation



### Argentina Constitution (1994)

#### Article 14

The State shall grant the benefits of social security, which shall be complete and irrenounceable. In particular, the State shall establish: compulsory social security, which shall be in the charge of national or provincial entities with financial and economic autonomy, administered by the interested parties with the participation of the State, but there can be no overlapping of contributions; flexible retirement pay and pensions; full protection of the family; protection of the family welfare; economic compensation to families and access to decent housing.

#### Artículo 22

Aprobar o desechar tratados concluidos con las demás naciones y con las organizaciones internacionales y los concordatos con la Santa Sede. Los tratados y concordatos tienen jerarquía superior a las leyes. La Declaración Americana de los Derechos y Deberes del Hombre; la Declaración Universal de Derechos Humanos; la Convención Americana sobre Derechos Humanos; el Pacto Internacional de Derechos Económicos, Sociales y Culturales; el Pacto Internacional de Derechos Civiles y Políticos y su Protocolo Facultativo; la Convención sobre la Prevención y la Sanción del Delito de Genocidio; la Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial; la Convención sobre la Eliminación de todas las Formas de Discriminación contra la Mujer; la Convención contra la Tortura y otros Tratos o Penas Crueles, Inhumanos o Degradantes; la Convención sobre los Derechos del Niño: en las condiciones de su vigencia, tienen jerarquía constitucional, no derogan artículo alguno de la primera parte de esta Constitución y deben entenderse complementarios de los derechos y garantías por ella reconocidos. Solo podrán ser denunciados, en su caso, por el Poder Ejecutivo nacional, previa aprobación de las dos terceras partes de la totalidad de los miembros de cada Cámara. Los demás tratados y convenciones sobre derechos humanos, luego de ser aprobados por el Congreso, requerirán del voto de las dos terceras partes de la totalidad de los miembros de cada Cámara para gozar de la jerarquía constitucional.

[Establishing that international treaties, including the International Covenant on Economic, Social and Cultural Rights, are incorporated into, and indeed trump, domestic law.]



## National Housing Rights Legislation



### **Bosnia and Herzegovina** Constitution (1995)

#### Article 2 (1) Human Rights

Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. To that end, there shall be a Human Rights Commission for Bosnia and Herzegovina as provided for in Annex 6 to the General Framework Agreement.

#### Article 2 (2) International Standards

The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.

#### Article 2 (5) Refugees and Displaced Persons

All refugees and displaced persons have the right to freely return to their homes of origin. They have the right, in accordance with Annex 7 to the General Framework Agreement, to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void.



## National Housing Rights Legislation



### **Cape Verde** Constitution (1992)

#### Article 10 (International Relations)

1. The State of Cape Verde shall be guided in international relations by the principles of national independence, the respect for International Law and Human Rights, the equality amongst States, the non-intervention in the internal affairs of other States, the reciprocity of advantages, the cooperation with all other peoples and peaceful coexistence.

#### Article 66 (Right to private property)

1. Everyone shall have the right to private property, as well as its transfer in life or as a result of death, in accordance with the Constitution and the law.
2. The right to inheritance shall be guaranteed.
3. The requisition or expropriation for public reasons shall only take place in accordance with the law and always against the payment of a just compensation.

#### Article 69 (Dwelling)

Everyone shall have the right to a dwelling which should have a minimum of dignity and, for this purpose, the State shall undertake to promote, gradually and in conformity with the national economic development, the creation of the appropriate institutional, legal and infrastructural conditions, foment and support the initiatives of the local communities and of the population and stimulate private housing development and the access to privately owned housing.



## National Housing Rights Legislation



### **Czech Republic** Constitution (1993)

#### Article 10 [Human Rights Treaties]

Ratified and promulgated international accords on human rights and fundamental freedoms, to which the Czech Republic has committed itself, are immediately binding and are superior to law.



## National Housing Rights Legislation



### East Timor Constitution (2002)

#### Section 9 (International law).

1. The legal system of East Timor shall adopt the general or customary principles of international law.
2. Rules provided for in international conventions, treaties and agreements shall apply in the internal legal system of East Timor following their approval, ratification or accession by the respective competent organs and after publication in the official gazette.
3. All rules that are contrary to the provisions of international conventions, treaties and agreements applied in the internal legal system of East Timor shall be invalid.

#### Section 37 (Inviolability of home and correspondence)

1. Any person's home and the privacy of his or her correspondence and other means of private communication are inviolable, except in cases provided for by law as a result of criminal proceedings.
2. A person's home shall not be entered against his or her will, except under the written order of a competent judicial authority and in the cases and manner prescribed by law.
3. Entry into any person's home at night against his or her will is clearly prohibited, except in case of serious threat to life or physical integrity of somebody inside the home.

#### Section 58 (Housing).

Everyone has the right to a house, both for himself or herself and for his or her family, of adequate size that meets satisfactory standards of hygiene and comfort and preserves personal intimacy and family privacy.



## National Housing Rights Legislation



### France Constitution (1958)

#### Article 55

Treaties or agreements regularly ratified or approved have, from the time of publication, an authority superior to that of laws, provided, in the case of each agreement or treaty, that it is applied by the other party.



## National Housing Rights Legislation



### Georgia Constitution (1991)

#### Preamble

The people of Georgia whose strong will is to establish a democratic social order, economic independence, a social and legal state, guarantee universally recognised human rights and freedoms, strengthen state independence and peaceful relations with other countries, universally announce this constitution based upon many centuries of state tradition and the main principles of the Constitution of 1921.

#### Article 6(2)

The legislation of Georgia corresponds with universally recognised norms and principles of international law. International treaties or agreements concluded with and by Georgia, if they are not in contradiction to the Constitution of Georgia, have prior legal force over internal normative acts.



## National Housing Rights Legislation



**Iraq**

Interim Constitution (2004)

### Article 23 [Other Rights, Rights of Foreigners]

The enumeration of the foregoing rights must not be interpreted to mean that they are the only rights enjoyed by the Iraqi people. They enjoy all the rights that befit a free people possessed of their human dignity, including the rights stipulated in international treaties and agreements, other instruments of international law that Iraq has signed and to which it has acceded, and others that are deemed binding upon it, and in the law of nations. Non-Iraqis within Iraq shall enjoy all human rights not inconsistent with their status as non-citizens.





## National Housing Rights Legislation



**Italy**  
Constitution (1947)

### Article 2 [Human Rights]

The republic recognizes and guarantees the inviolable human rights, be it as an individual or in social groups expressing their personality, and it ensures the performance of the unalterable duty to political, economic, and social solidarity.



## National Housing Rights Legislation



### **Mongolia** Constitution (1992)

#### Article 10 [Foreign Policy, Treaties]

- (1) Mongolia adheres to the universally recognized norms and principles of international law and pursues a peaceful foreign policy.
- (2) Mongolia fulfills in good faith its obligations under international treaties to which it is a Party.
- (3) The international treaties to which Mongolia is a Party become effective as domestic legislation upon the entry into force of the laws on their ratification or accession.

#### Article 16

- (13). Privacy of citizens, their families, correspondence, and homes are protected by law.



## National Housing Rights Legislation



### **Romania** Constitution (1991)

#### Article 11 [International Treaties]

- (1) The Romanian State pledges to fulfil as such and in good faith its obligations as deriving from the treaties it is a party to.
- (2) Treaties ratified by Parliament, according to the law, are part of national law.



## National Housing Rights Legislation



### Senegal Constitution (2001)

#### Preamble

The sovereign people of Senegal ... Affirm: their adherence to the Declaration of Human Rights of 1789 as well as to the international instruments adopted by the United Nations and the Organization of African Unity, in particular the Universal Declaration of Human Rights of 10 December 1948, the Convention on the Elimination of all Forms of Discrimination Against Women of 18 December 1979, the Convention on the Rights of the Child of 20 November 1989 and the African Charter on Human and Peoples' Rights of 27 June 1981;

#### Article 98

Treaties or agreements duly ratified shall, upon their publication, have an authority superior to that of the laws, subject, for each treaty and agreement, to its application by the other party.

#### Article 16

The home shall be inviolable. A house search may not be ordered except by a judge or another authority designated by law. Searches may be conducted only in the form prescribed by these authorities. Measures impairing or restricting the inviolability of the home may be taken only in order to provide against a common danger or to protect persons in danger of death. Such measures may also be taken, pursuant to law, in order to protect public order against impending threat and especially to combat the risks of epidemics or to protect youth in danger.



## National Housing Rights Legislation



### Slovakia Constitution (1992)

#### Article 20

- (1) Everyone has the right to own property. Property rights of all owners shall be uniformly construed and equally protected by law. The right of inheritance is guaranteed.
- (2) For the purposes of safeguarding the needs of the society, the interests of the general public, and the advancement of the national economy, the law shall establish certain property, (including that defined in article 4) as the exclusive property of the State, the municipality or specific corporate bodies. In addition, the law can specify property which may be owned only by individual citizens or corporations residing in the Slovak Republic.
- (3) Ownership limits. Property may not be misused to cause injury to another person or in contradiction to the public interests protected by law. The exercise of property rights must not be detrimental to the health of other people, wild life, cultural sites or the environment beyond the standards fixed by law.
- (4) Expropriation or restrictions on property rights shall be imposed only to the extent legally justified for the protection of the public interest and shall be justly compensated.

#### Article 21 [Inviolability of the Home]:

- (1) A person's home is inviolable. It must not be entered without the resident's consent.
- (2) A house search is admissible only in connection with criminal proceedings and only on the basis of the judge's written and substantiated order. The method of carrying out a house search will be set out in a law.
- (3) Other infringements upon the inviolability of one's home can be permitted by law only if this is inevitable in a democratic society in order to protect people's lives, health, or property, to protect the rights and liberties of others, or to ward off a serious threat to public order. If the home is used also for business or to perform some other economic activity, such infringements can be permitted by law also when this is unavoidable in meeting the tasks of public administration.

#### Article 39

- (1) Citizens shall be entitled to adequate material security in their old age, as well as in cases of disability, and death of the family's principal provider.
- (2) Any person suffering material hardship, shall have the right to such assistance as may be necessary to secure his or her fundamental standard of life.
- (3) Further details of rights defined in sections (1) and (2) of this Article shall be provided by law.

#### Article 11 [Human Rights]

International treaties on human rights and basic liberties that were ratified by the Slovak Republic and promulgated in a manner determined by law take precedence over its own laws, provided that they secure a greater extent of constitutional rights and liberties.



## National Housing Rights Legislation



### Venezuela Constitution (1999)

#### Artículo 23

Los tratados, pactos y convenciones relativos a derechos humanos, suscritos y ratificados por Venezuela, tienen jerarquía constitucional y prevalecen en el orden interno, en la medida en que contengan normas sobre su goce y ejercicio más favorables a las establecidas por esta Constitución y la ley de la República, y son de aplicación inmediata y directa por los tribunales y demás órganos del Poder Público.

[Establishing that international human rights treaties are incorporated into, and indeed trump, domestic law.]

#### Article 82

Everyone has a right to adequate housing, which is secure, comfortable, hygienic, with basic essential services that include an environment which humanizes family relations, neighborhoods and communities. The progressive realization of this right is an obligation which is divided between citizens and the State in all respects.

The State shall give priority to families and shall guarantee the existence of measures and access to social policies for credit and for the construction, acquisition or improvement of housing, especially to families with limited resources.



## National Housing Rights Legislation



### **Bolivia**

Supreme Decree No. 22407 (19 February 1990)

[Chapter VI of which calls for the implementation of a National Housing Plan to diminish the country's housing deficit, particularly through the organization of the Low-Cost Housing Plan.] [↗](#)



## National Housing Rights Legislation



### Brazil

#### Statute of the City, Law No. 10-257 (June 2001)

[City Statute, establishes norms for public order and social interest which regulate the use of urban property in favour of the common good, safety and well-being of citizens, as well as environmental equilibrium.]

#### Article 2

The purpose of urban policy is to give order to the full development of the social functions of the city and of urban property, through the following general guidelines:

- I - guarantee the right to sustainable cities, understood as the right to urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, to work and leisure for current and future generations; ...
- XV - simplification of the legislation concerning subdivisions, land use, occupation and building regulations, in order to permit a reduction in costs and increase in the supply of lots and housing units;

#### Article 3

It is the responsibility of the Federal Government, in addition to its other attributions related to urban policy: ...

- IV - institute guidelines for urban development, including housing, basic sanitation, and urban transportation;

#### Article 3

It is the responsibility of the Federal Government, in addition to its other attributions related to urban policy:

- III - promote, through its own initiative and in conjunction with the States, the Federal District and the municipalities, housing construction programs and the improvement of housing conditions and basic sanitation;

#### Section V: Special usucapion rights for urban property

#### Article 9

Someone who has possession of an urban area or building of up to two hundred and fifty square meters, for five years, uninterruptedly and without contestation, who uses it for their residence or that of their family, can establish their dominion, as long as they are not the owner of any other urban or real estate.

- § 1<sup>o</sup> The title of dominion will be conferred to the man or woman, or both, whether or not they are married or single.
- § 2<sup>o</sup> The rights granted in this article will not be recognized to the same possessor more than once.
- § 3<sup>o</sup> For the purposes of this article, the legitimate heir, continues to have full rights to the possession of their predecessor as long as they reside in the property at the time it was left open to succession.

#### Article 10

Urban areas with more than two hundred and fifty square meters, occupied by the low income population for their housing, for five years, uninterruptedly and without opposition, where it is not possible to identify the land occupied by each possessor, are susceptible to collective usucapions, as long as the possessors are not owners of other urban or rural property.

- § 1<sup>o</sup> The owner can, in order to count the time period required by this article, add to his possession that of his predecessor, as long as the contact is continuous for both.
- § 2<sup>o</sup> The special collective usucapion of urban real estate will be declared by the judge, through a sentence, which will serve as title to register in the real estate deeds office.
- § 3<sup>o</sup> In the sentence, the judge will attribute an equal ideal portion of the land to each possessor, independently of the size of the land that each occupies, except in the case of a written agreement among the condominiums, establishing differentiated ideal portions.



§ 4. The special condominium constituted is indivisible and cannot be terminated except by favorable determination made by at least two thirds of the members of the condominium, in the case of the execution of urbanization after the constitution of the condominium.

§ 5. The determinations related to the administration of the special condominium will be taken by a majority of votes of the condominium members present, requiring the others to comply with the decision, whether or not they agree or were absent.

#### Article 11

While the special urban action for usucapion is pending, any other actions, petitions, or possessions that come to be proposed relative to the real estate subject to usucapion will be stayed,

#### Article 12

Legitimate parties for the proposal of an action for special urban usucapion include:

I - the possessor, in isolation, in group or supervenient;

II - the possessors, in a state of co-possession;

III - as a processual substitute, an association of community residents, duly established, with legal standing, as long as it is explicitly authorized by those it represents.

§ 1. In the action of special urban usucapion, intervention by the Attorney General is required.

§ 2. The author should have all the benefits of the courts and of free legal assistance, as well as in the real estate deeds office.

#### Article 13

Special usucapion for urban real estate can be invoked as a matter of defense, with the sentence that recognizes it considered valid title to be registered in the real estate deeds office.

#### Article 14

In the legal action of special urban real estate usucapion, the processual writ to be observed is a summary action.



## National Housing Rights Legislation



### Canada

#### National Housing Act (Chapter N-11)

An Act to promote the construction of new houses, the repair and modernization of existing houses, and the improvement of housing and living conditions.

#### Article 73.

It is the responsibility of the Corporation to cause investigations to be made into housing conditions and the adequacy of existing housing accommodation in Canada or in any part of Canada and to cause steps to be taken for the distribution of information leading to the construction or provision of more adequate and improved housing accommodation and the understanding and adoption of community plans in Canada.



## National Housing Rights Legislation



**Denmark**

Law on Social Assistance

The law on social assistance places on the town councils the burden of supplying suitable housing.



## National Housing Rights Legislation



**France**  
Law of 31 May 1990

The right to housing is a fundamental right.



## National Housing Rights Legislation



**France**

Law of 22 June 1982

The right to housing is a fundamental right.



## National Housing Rights Legislation



### Indonesia

Law of the Republic of Indonesia, Law No.4 (1992) <sup>(2)</sup>

#### Article 5.

- (1) Every citizen has the right to occupy and/or enjoy and/or own a decent house in a healthy, safe, harmonious and orderly environment.
- (2) Every citizen has the obligation and responsibility to participate in the construction of real estate and residential areas.

#### Article 6.

- (1) Activities to construct houses or real estate are conducted by the owner of land title pursuant to the prevailing laws.
- (2) The construction of houses or real estates by a non-owner of land title may be conducted with approval of the owner of land title in a written agreement.

#### Article 7.

- (1) Every person or agency constructing a house or real estate is obliged:
  - (a) to comply with technical, ecological and administrative requirements;
  - (b) to monitor the environment affected by the impact on the basis of the environment monitoring plan;
  - (c) to manage the environment on the basis of the environment management plan.



## National Housing Rights Legislation



### **Ireland** Housing Act of 1988

The local authorities are obliged to assess the importance of housing needs, to make a census of homeless persons and to set housing priorities.



## National Housing Rights Legislation



### Russian Federation

#### Law of the Russian Federation on Basic Principles of Federal Housing Policy Law (1992)

##### Preamble.

Determines basic principles of exercising [the] constitutional right of citizens of the Russian Federation for housing under new social and economic conditions, establishes [the] general basis for legal regulation of housing relationships ... [and] development of diverse forms of property and types of real estate in [the] housing sector.

The goal of federal housing policy is to ensure social guarantees for the right to citizens for housing, to accomplish construction and rehabilitation of state, municipal and private housing stock; to create conditions for the attraction of non-budget sources of financing...; to develop private property, to protect entrepreneurs and owners rights in the housing sector; and to promote competition in construction, repair and maintenance of the housing stock, manufacture of building materials, articles and goods to furnish houses.

##### Article 2.

Citizens of the Russian Federation have the right to housing. This right is exercised through providing residential units in state and municipal housing stock ... with the social norms of residential floor space, as well as through rent, purchase or construction of housing at one's own expense without any limit to floor space.

To citizens who are not provided with housing according to the established norms, the state renders assistance through developing construction of buildings of state and municipal stock intended for providing residential premises under [lease], as well as through the system of compensations (subsidies) and privileges on payment of construction, maintenance and repair of housing.

##### Article 15.

Where the government evicts a tenant in state housing for non-payment of rent or utilities, the government must provide the tenant with alternative living accommodations within the hostel norm.





## National Housing Rights Legislation



### **United Republic of Tanzania**

#### Land Act No. 4 (1999) and Village Land Act No. 5 (1999)

[The Land Act and the Village Land Act together provide the basic law in relation to the management and administration of land, settlement of disputes and related matters. Implementation of the Land laws will give rise to the need to inform all stakeholders about their rights and obligations, so that they can effectively participate in their implementation. The Village Land Act 1999 also creates opportunities of collective land ownership for pastoralists.]



## National Housing Rights Legislation



**Bolivia**

Act No. 23660 Regulating the Ministries Act (12 October 1993)

Article 79.

[One of the aims of the National Secretary for Urban Affairs is] ... to promote urban development policy and access by the population to adequate housing.



## National Housing Rights Legislation



### Brazil

#### Statute of the City, Law No. 10-257 (June 2001)

[City Statute, establishes norms for public order and social interest which regulate the use of urban property in favour of the common good, safety and well-being of citizens, as well as environmental equilibrium.]

#### Article 2

The purpose of urban policy is to give order to the full development of the social functions of the city and of urban property, through the following general guidelines:

- I - guarantee the right to sustainable cities, understood as the right to urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, to work and leisure for current and future generations; ...
- XV - simplification of the legislation concerning subdivisions, land use, occupation and building regulations, in order to permit a reduction in costs and increase in the supply of lots and housing units;

#### Article 3

It is the responsibility of the Federal Government, in addition to its other attributions related to urban policy: ...

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Someone who has possession of an urban area or building of up to two hundred and fifty square meters, for five years, uninterruptedly and without contestation, who uses it for their residence or that of their family, can establish their dominion, as long as they are not the owner of any other urban or real estate.

- § 1<sup>o</sup> The title of dominion will be conferred to the man or woman, or both, whether or not they are married or single.
- § 2<sup>o</sup> The rights granted in this article will not be recognized to the same possessor more than once.
- § 3<sup>o</sup> For the purposes of this article, the legitimate heir, continues to have full rights to the possession of their predecessor as long as they reside in the property at the time it was left open to succession.

#### Article 10

Urban areas with more than two hundred and fifty square meters, occupied by the low income population for their housing, for five years, uninterruptedly and without opposition, where it is not possible to identify the land occupied by each possessor, are susceptible to collective usucapions, as long as the possessors are not owners of other urban or rural property.

- § 1<sup>o</sup> The owner can, in order to count the time period required by this article, add to his possession that of his predecessor, as long as the contact is continuous for both.
- § 2<sup>o</sup> The special collective usucapion of urban real estate will be declared by the judge, through a sentence, which will serve as title to register in the real estate deeds office.
- § 3<sup>o</sup> In the sentence, the judge will attribute an equal ideal portion of the land to each possessor, independently of the size of the land that each occupies, except in the case of a written agreement among the condominiums, establishing differentiated ideal portions.

§ 4. The special condominium constituted is indivisible and cannot be terminated except by favorable determination made by at least two thirds of the members of the condominium, in the case of the execution of urbanization after the constitution of the condominium.

§ 5. The determinations related to the administration of the special condominium will be taken by a majority of votes of the condominium members present, requiring the others to comply with the decision, whether or not they agree or were absent.

#### Article 11

While the special urban action for usucapion is pending, any other actions, petitions, or possessions that come to be proposed relative to the real estate subject to usucapion will be stayed,

#### Article 12

Legitimate parties for the proposal of an action for special urban usucapion include:

I - the possessor, in isolation, in group or supervenient;

II - the possessors, in a state of co-possession;

III - as a processual substitute, an association of community residents, duly established, with legal standing, as long as it is explicitly authorized by those it represents.

§ 1. In the action of special urban usucapion, intervention by the Attorney General is required.

§ 2. The author should have all the benefits of the courts and of free legal assistance, as well as in the real estate deeds office.

#### Article 13

Special usucapion for urban real estate can be invoked as a matter of defense, with the sentence that recognizes it considered valid title to be registered in the real estate deeds office.

#### Article 14

In the legal action of special urban real estate usucapion, the processual writ to be observed is a summary action.



## National Housing Rights Legislation



### Canada Housing Development Act

#### Article 4.

The Minister may:

- (a) make grants in aid of studies into housing conditions or any matter relating to housing in Ontario; and
- (b) make grants and otherwise assist the housing building industry in Ontario by stimulating and encouraging research, education and constructive competition within the industry.

#### Article 7.

- (1) The Crown in right of Ontario represented by the Minister may make agreements with the Crown in right of Canada represented by the Minister of Government Services or such other Minister as may be authorized in that behalf respecting joint projects as contemplated in section 40 of the National Housing Act (Canada) for:
  - (a) the acquisition and development of land for housing purposes;
  - (b) the construction of housing projects for sale or for rent; and
  - (c) the acquisition, improvement and conversion for housing purposes of existing buildings situated in any municipality.
- (2) The Lieutenant Governor in Council may constitute corporations with such powers and duties as are considered expedient to carry out any of the terms of any agreement made under subsection (1), or to carry out any building development or housing project, including power to plan, construct and manage any building development or any housing project undertaken under such agreement or otherwise, and including power to acquire and dispose of land in their own name.
- (3) Any money required to be furnished by the Crown in right of Ontario under any agreement made under subsection (1) shall be paid out of the money appropriated therefor by the Legislature.
- (4) Any money required by the Crown in right of Ontario for the purposes of any corporation constituted under subsection (2) for purposes other than to carry out the terms of an agreement made under subsection (1) shall be paid out of the money appropriated therefor by the Legislature.
- (5) Despite any other Act, the council of a municipality that enters into or has heretofore entered into an agreement with Her Majesty the Queen in right of Ontario, or with Her Majesty the Queen in right of Ontario and Central Mortgage and Housing Corporation, a corporation established by The Central Mortgage and Housing Corporation Act (Canada) pursuant to The Housing Development Act, 1948 or this Act or predecessor of this Act shall be deemed to have and to have had authority to enter into such agreement and shall have all such powers as may be necessary to carry out the provisions thereof or of any undertaking given by such council pursuant thereto, and, without limiting the generality of the foregoing, such council may incur continuing obligations and make provisions for the discharge thereof and may contribute money to and expend money on joint housing projects and raise money therefor by the issue of debentures, all without the assent of the electors and without reference to the Ontario Municipal Board, and such council may apportion any debt or obligation arising out of such agreement in such manner as it considers equitable against any properties, whether such properties form part of a project within the meaning of such agreement or are adjacent thereto, and such debt or obligation when so apportioned shall be deemed to be a land tax within the meaning of the Municipal Act and recoverable as such.

#### Article 16.

In sections 17 and 18, “housing project” means a project designed to provide housing accommodation or to facilitate in any way the provision of housing accommodation, with or without any public space recreational facilities and commercial space or buildings appropriate thereto.

#### Article 17.

If there is an official plan in effect in a municipality that includes provisions relating to the provision of housing, which provisions have been approved by the Minister subsequent to the coming into force of this section, or if the council of a municipality has adopted a policy statement containing provisions relating to the provision of housing

which statement has been approved by the Minister, the council of the municipality may:

- (a) acquire and hold land, with or without buildings thereon, within the municipality for the purpose of a housing project;
- (b) survey, clear, grade, subdivide, service and otherwise prepare such land for the purpose of the project; and
- (c) sell, lease or otherwise dispose of such land for a nominal or other consideration for housing purposes.

**Article 19.**

To relieve any emergency in housing conditions, a municipality, with the approval of the Minister, may erect, maintain, manage and wind up projects for temporary housing accommodation either in or outside the municipality.



## National Housing Rights Legislation



**India**

### Urban Land (Ceiling and Regulation) Act (1976)

#### Preamble.

[T]he Urban Land (Ceiling and Regulation) Act, 1976 provides for the imposition of a ceiling on vacant land in urban agglomerations and the acquisition of such land in excess of the ceiling limit to regularize the construction of buildings on this land and for matters connected therewith with a view to preventing the concentration of urban land in the hands of a few persons, and speculation and profiteering, with a view to bring about equitable distribution of urban lands to subserve the common good.

#### Section 3. Persons not entitled to hold vacant land in excess of the ceiling limit:

Except as otherwise provided in this Act, on and from the commencement of this Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit, in the territories to which this Act applies under sub-section (2) of Section 1.

#### Section 10. Acquisition of vacant land in excess of ceiling limit

As soon as may be after the service of the statement under Section 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that —

- i. such vacant land is to be acquired by the concerned State Government; and
- ii. the claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land.



## National Housing Rights Legislation



### Philippines

#### The Urban Development and Housing Act of 1992 (Republic Act No. 7279)

##### Section 2. Declaration of State Policy and Program Objectives:

It shall be the policy of the State to undertake, in cooperation with the private sector, a comprehensive and continuing Urban Development and Housing Program, hereinafter referred to as the Program, which shall:

- (a) Uplift the conditions of the underprivileged and homeless citizens, in urban areas and in resettlements areas by making available to them decent housing at affordable cost, basic services, and employment opportunities;
- (b) Provide for the rational use and development of urban land in order to bring about the following:
  - (1) Equitable utilization of residential lands in urban and urbanizable areas with particular attention to the needs and requirement of the underprivileged and homeless citizens and not merely on the basis market forces;
  - (2) Optimization of the use and productivity of land and urban resources;
  - (3) Development of urban areas conducive to commercial and industrial activities which can generate more economic opportunities for the people;
  - (4) Reduction in urban dysfunctions, particularly those that adversely affect public health, safety and ecology; and
  - (5) Access to land and housing by the underprivileged and homeless citizens;
- (c) Adopt workable policies to regulate and direct urban growth and expansion towards a dispersed urban net and more balanced urban-rural interdependence;
- (d) Provide for an equitable land tenure system that shall guarantee security of tenure to program beneficiaries but shall respect the rights of small property owners and ensure the payment of just compensation;
- (e) Encourage more effective peoples' participation in the urban development process; and
- (f) Improve the capability of local government units in undertaking urban development and housing programs and projects.

##### Section 3. Definition of Terms: For the purposes of this Act:

- (l) "On-site development" refers to the process of upgrading and rehabilitation of blighted and slum urban areas with a view to minimizing displacement of dwellers in said areas, and with provisions for basic services as provided for in Section 21 hereof;  
...
- (n) "Resettlement areas" refers to areas identified by the appropriate national agency or by the local government unit with respect to areas within its jurisdiction, which shall be used for the relocation of the underprivileged and homeless citizens;
- (o) "Security of tenure" refers the degree of protection afforded to qualified Program beneficiaries against infringement or unjust, unreasonable and arbitrary eviction or disposition by virtue of the right of ownership, lease agreement, usufruct and other contractual arrangements.  
...
- (t) "Underprivileged and homeless citizens" refers to the beneficiaries of this Act and to individuals or families residing in urban and urbanizable areas whose income or combined household income falls within the poverty threshold as defined by the National Economic and Development Authority and who do not own housing facilities. This shall include those who live in makeshift dwelling units and do not enjoy security of tenure.  
...

## Chapter II

### Section 7. Inventory of Lands



Within one (1) year from the effectivity of this Act, all city and municipal governments shall conduct an inventory of all lands and improvements thereon within their respective localities.

#### Section 9. Priorities in the Acquisition of Land

Lands for socialized housing shall be acquired in the following order:

- (a) Those owned by the Government or any of its subdivisions, instrumentalities, or agencies, including government-owned or -controlled corporations and their subsidiaries;
- (b) Alienable lands of the public domain;
- (c) Unregistered or abandoned and idle lands;
- (d) Those within the declared Areas for Priority Development, Zonal Improvement Program sites, and Slum Improvement and Resettlement Program sites which have not yet been acquired;
- (e) Bagong Lipunan Improvement of Sites and Services or BLISS sites which have not yet been acquired; and
- (f) Privately-owned lands.

Where on-site development is found more practicable and advantageous to the beneficiaries, the priorities mentioned in this section shall not apply. The local government units shall give budgetary priority to on-site development of government lands.

#### Section 10. Modes of Land Acquisition

The modes of acquiring lands for purposes of this Act shall include, among others, community mortgage, land swapping, land assembly or consolidation, land banking, donation to the Government, joint-venture agreement, negotiated purchase, and expropriation; Provided however, That expropriation shall be resorted to only when other modes of acquisition have been exhausted. Provided further, That where expropriation is resorted to, parcels of land owned by small property owners shall be exempted for purposes of this Act; Provided finally, That abandoned property, as herein defined, shall be reverted and escheated to the State in a proceeding analogous to the procedure laid down in Rule 91 of the Rules of Court.

For the purpose of socialized housing, government-owned and foreclosed properties shall be acquired by the local government units, or by the National Housing Authority primarily through negotiated purchase; Provided, That qualified beneficiaries who are actual occupants of the land shall be given the right of first refusal.

#### Section 11. Expropriation of Idle Lands

All idle lands in urban and urbanizable areas, as defined and identified in accordance with this Act, shall be expropriated and shall form part of the public domain. These lands shall be disposed of or utilized by the Government for such purposes that conform with their land use plans. Expropriation proceedings shall be instigated if, after the lapse of one (1) year following receipt of notice of acquisition, the owner fails to introduce improvements as defined in Section 3 (f) hereof, except in the case of force majeure and other fortuitous events. Exempted from this provision, however, are residential lands owned by small property owners or those the ownership of which is the subject of a pending litigation.

#### Section 14. Limitations on the Disposition of Lands for Socialized Housing

No land for socialized housing, including improvements or rights thereon, shall be sold, alienated, conveyed, encumbered or leased by any beneficiary of this Program except to qualified program beneficiaries as determined by the government agency concerned. ...

#### Section 15. Policy

Socialized housing, as defined in Sec. 3 hereof, shall be the primary strategy in providing shelter for the underprivileged and homeless. However, if the tenurial arrangement in a particular socialized housing program is in the nature of leasehold or usufruct, the same shall be transitory and the beneficiaries must be encouraged to become independent from the Program within a given period of time, to be determined by the implementing agency concerned.

#### Section 18. Balanced Housing Developments

The Program shall include a system to be specified in the Framework plan whereby developers of proposed subdivision projects shall be required to develop an area for socialized housing equivalent to at least twenty percent (20%) of the total subdivision area or total subdivision cost, at the option of the developer, within the same city or municipality, whenever feasible, and in accordance with the standards set by the Housing and Land Use Regulatory Board and other existing laws. ...

## Section 22. Livelihood Component

To the extent feasible, socialized housing and resettlement projects shall be located near areas where employment opportunities are accessible. The government agencies dealing with the development of livelihood programs and grant of livelihood loans shall give priority to the beneficiaries of the program.

## Section 26. Urban Renewal and Resettlement

This shall include the rehabilitation and development of blighted and slum areas and the resettlement of program beneficiaries in accordance with the provision of this Act. On-site development shall be implemented whenever possible in order to ensure minimum movement of occupants of blighted lands and slum areas. The resettlement of the beneficiaries of the program from their existing places of occupancy shall be undertaken only when on-site development is not feasible and after compliance with the procedure laid down in Section 28 of this Act.

## Section 29. Resettlement

Within two (2) years from the effectivity of this Act, the local government units, in coordination with the National Housing Authority, shall implement the relocation and resettlement of persons living in danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and in other public places such as sidewalks, roads, parks, and playgrounds. The local government units, in coordination with the National Housing Authority, shall provide relocation or resettlement sites with basic services and facilities and access to employment and livelihood opportunities sufficient to meet the basic needs of affected families.

## Section 28. Eviction and Demolition

Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:

- (a) When persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, river banks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds;
- (b) When government infrastructure projects with available funding are about to be implemented; or
- (c) When there is a court order for eviction and demolition.

In the execution of eviction or demolition order involving underprivileged and homeless citizens, the following shall be mandatory:

- 1) Notice upon the affected persons or entities at least thirty (30) days prior to the date of eviction or demolition;
- 2) Adequate consultations on the matter of resettlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated;
- 3) Presence of local government officials or their representatives during eviction or demolition;
- 4) Proper identification of all persons taking part in the demolition;
- 5) Execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;
- 6) No use of heavy equipment for demolition except for structures that are permanent and of concrete materials;
- 7) Proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures; and
- 8) Adequate relocation, whether temporary or permanent.

## Section 44. Moratorium on Eviction and Demolition

There shall be a moratorium on the eviction of all Program beneficiaries and on the demolition of their houses or dwelling units for a period of three (3) years from the affectivity of this Act: Provided, That the moratorium shall not apply to those persons who have constructed their structures after the affectivity of this Act and for cases enumerated in Section 28 hereof.



## National Housing Rights Legislation



### Indonesia

#### Basic Agrarian Law, Law No. 5 (1960) <sup>(a)</sup>

#### Article 2.

- (1) As per the basic regulation in Article 33(3) of the Constitution and subjects as mentioned in Article 1 on land, waters and air space including natural resources affected by development, managed by the State, as an entity of power for the entire population.
- (2) The management by the State as stated in paragraph 1 give authority to:
  - (a) arrange and to take care of the purpose, usage, preparation and maintenance and cultivation of the said land, water and air space;
  - (b) specify and put in order the law on the relationship between the people with the land, water and air space; and
  - (c) specify and put in order the law on the relationship between the people and the action of law with regards to land, water and air space.
- (3) The right derived from the management function of the said State as stated in paragraph 2 of this article is use to improve the community's prosperity, meaning happiness, safety and independence as defined by Indonesian sovereignty and the judicial system.

#### Article 4.

- (1) As per basic rights of authority from the State as stated in Article 2, it is confirmed that the presence of the different rights for the earth's surface which is the land, is to be given to and owned by the people, either personally or together with other people and also with judicial bodies.
- (2) The rights over the land mentioned in paragraph 1 of this Article gives the authority to use the said land and also the contours of the land and water and space necessary for the usage of the land in accordance with the limitations as per these laws and other eminent judicial regulations.

#### Article 16.

- (1) Rights on land and water as mentioned in Article 4 (1) are the following:
  - (a) Rights of ownership;
  - (b) Rights on initiative utilization;
  - (c) Rights on building use;
  - (d) Rights of usage;
  - (e) Rights of lease;
  - (f) Rights to clean the land;
  - (g) Rights to harvest the products of the land;
  - (h) Other rights, not included in the rights mentioned above but which have been stipulated under article 33 of the Constitution.



## National Housing Rights Legislation



### Legal Security of Tenure

Legal security of tenure is recognised by the United Nations as an essential component of the right to adequate housing. General Comment No. 4, issued by the UN Committee on Economic, Social and Cultural Rights, articulates the minimum level of secure tenure required by international law, stating that “all persons should possess a degree of security of tenure which guarantees legal protection against forced evictions, harassment and other threats.” General Comment No. 4 implies that security of tenure is not to be realised progressively, rather, it states that States Parties to the International Covenant on Economic, Social and Cultural Rights should “take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection” and to do so “in genuine consultation with affected persons and groups.”

Legal security of tenure takes many forms, but all involve providing dwellers with some form of due process designed to protect them from arbitrary deprivation of housing rights, including protection from forced eviction. Legal security of tenure can be and in many cases has been incorporated into national legislation with respect to various forms of tenure, whether ownership, rental and informal tenure. Examples of each follow.



## National Housing Rights Legislation



**Colombia**

Act No. 56 of 1985

### Article 1.

[Article 1 recognizes the right to housing of the Colombian family as an obligation of the State, a right which is necessary for the life and economic development of the community and responds to the need to harmonize the exercise of the right of ownership and its use with the public interest. Article 2 provides that a contract for rented urban accommodation is one by which two parties enter into reciprocal obligations, on the one hand to grant the total or partial enjoyment of an urban building intended for housing, and on the other to pay a specified price for such enjoyment.] <sup>(6)</sup>

### Article 24.

When eviction proceedings are initiated, as provided for under article 434 of the Code of Civil Procedure, in addition to the requirements noted therein, the following shall be taken into account:

- (i) When the defendant cannot be notified in person of the court order accepting the application within two (2) days from the date of its issue, a notice to that effect shall be posted in the entrance of the building;
- (ii) The preliminary pleas referred to in article 97 of the Code of Civil Procedure for this kind of eviction proceedings must be entered within the time-limit set for service of process;
- (iii) In the cases referred to in articles 434, sec. 10.337 and 338 of the Code of Civil Procedure, both parties shall furnish security for costs within five (5) days of the date of proceedings, equivalent to two (2) rental fees, guaranteeing compensation for any prejudice caused.



## National Housing Rights Legislation



### Germany

#### The Basic Law (1949)

#### Article 14. Property, Right of Inheritance, Expropriation <sup>41</sup>

- (1) Property and the right of inheritance are guaranteed. Their content and limits shall be determined by law.
- (2) Property imposes duties. Its use should also serve the public weal.
- (3) Expropriation shall be permitted only in the public weal. It may be effected only by or pursuant to a law which shall provide for the nature and extent of the compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute regarding the amount of compensation, recourse may be had to the ordinary courts.



## National Housing Rights Legislation



**India**

Delhi Development Act (1957)

### Section 15. Compulsory Acquisition of Land

- (1) If in the opinion of the Central Government, any land is required for the purpose of development, or for any other purpose, under this Act, the Central Government may acquire such land under the provisions of the Land Acquisition Act, 1894 (1 of 1894).
- (2) Where any land has been acquired by the Central Government, the Government may, after it has taken possession of the land, transfer the land to the Authority or any local authority for the purpose which the land has been acquired on payment by the Authority or the local authority of the compensation awarded under that Act and of the charges incurred by the Government in connection with the acquisition.



## National Housing Rights Legislation



### India Land Acquisition Act (1894)

#### Section 3(f). Public Purpose

The expression “public purpose” includes —

- i. the provision of village sites, or the extension, planned development or improvement of existing village sites.
- ii. the provision of land for town or rural planning;
- iii. the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned.
- iv. the provision of land for a corporation owned or controlled by the State.
- v. the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason; of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State.
- vi. the provision of land for the carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860) or under any corresponding law for the time being in force in a State, or a cooperative society within the meaning of any law relating to cooperative Societies for the time being in force in any State.
- vii. the provision of land for any other scheme of development sponsored by Government or with the prior approval of the approval of the appropriate Government, by a local authority;
- viii. the provision of any premises or building for locating a public office, but does not include acquisition of land for Companies.

#### Section 4. Publication of preliminary notification, and powers of officers thereupon

1. Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose (or for a Company) a notification to that effect shall be published in the Official Gazette, and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. (The last of the dates of such publication and the giving of such public notices, being hereinafter referred to as the date of the publication and notification.)
2. Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen — to enter upon and survey and take levels of any land in such locality, to dig or bore into the sub soil; to do all other acts necessary to ascertain whether the land is adopted for such purpose; to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made there on; to make such levels, boundaries and line by placing marks and cutting trenches; and where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle.
3. Provided that no person shall enter into any building or upon any enclosed court of garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days’ notice in writing of his intention to do so.

#### Section 6. Declaration that land is required for a public purpose

Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied after considering the report, if any, made under section 5A, sub section (2) that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary, to such Government or of some officer duly authorized to certify its orders (an different declarations may be made from time to time in respect of different parcels of any land covered by the same notifications under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (whenever required under section 5A, sub-section (2).





## National Housing Rights Legislation



### Indonesia

#### Presidential Decree (No. 55 (1993)) Concerning Land Acquisition for the Development of Public Interest <sup>(5)</sup>

##### Article 2.

- (1) The provisions concerning land speculation in this Presidential Decree shall solely be used for the acquisition of land for the implementation of development in the public interest.
- (2) Land acquisition for development in the public interest by the government shall be carried out through the release or the conveyance of rights to land.
- (3) Land acquisition for purposes other than development in the public interest by the Government shall be carried out through sale and purchase, exchange, or any other method agreed voluntarily by the parties concerned.

##### Article 3.

The release or conveyance of a right to land for development in the public interest shall be carried out on the basis of the principle of honouring rights to land.

##### Article 4.

- (1) Land acquisition and plans to fulfil the need for land required for development in the public interest can only be implemented if the proposed plan for development in the public interest is in conformity with and based on the General Spatial Plan already in effect.
- (2) Land acquisition as defined in paragraph (1) in regions where no General Spatial Plan is in effect shall be based on the already effective regional spatial plan or city spatial plan.

...

##### Article 8.

The Land Acquisition Committee has the following tasks:

- (1) to investigate and prepare the inventory of the land, buildings, crops and other structures related to the land to which the rights will be released or conveyed;
- (2) to investigate the legal status of the land to which the rights will be released or conveyed and the supporting documents thereof;
- (3) to assess and propose the amount of compensation for the land to which the rights will be released or conveyed;
- (4) to provide the holder of the right to land with a clarification or information on the plan and purpose of the proposed land acquisition;
- (5) to hold deliberations between the holders of the rights to land and the Government Agency requiring the land for the purpose of determining the form and/or size of compensation;
- (6) to observe the transfer of compensation money to the holders of the rights to land, buildings, crops and other objects on the land;
- (7) to draw up a written report on the implementation on the release or conveyance of the right to land.

##### Article 9.

Land acquisition for the implementation of development in the public interest shall be carried out through deliberation between the parties concerned.

##### Article 10.

- (1) Deliberation shall be held directly between the holders of the right to the land concerned and the Government Agency requiring the land.
- (2) In case the number of land rights holders makes it impossible to organize effective deliberations, the deliberation as meant in paragraph (1) shall be held between the Land Acquisition Committee and the Government Agency requiring the land and representatives appointed from and by the land right holders,

who will act as attorneys of all the land rights holders.

(3) The deliberation as meant in paragraph (1) shall be led by the Chairman of the Land Release Committee.

#### Article 11.

The deliberation shall be carried out in the location indicated in the invitation letter.

#### Article 12.

Compensation in the context of land acquisition shall be given for:

- (a) land rights;
- (b) buildings;
- (c) crops;
- (d) other objects on the land.

#### Article 13.

Compensation can be provided in any of the following forms:

- (a) money;
- (b) land replacement;
- (c) resettlement;
- (d) any combination of two or more of the forms of compensation defined in items a, b and c; and
- (e) any other forms agreed by the parties concerned.

#### Article 14.

Compensation of land held under the right of Ulayat (traditional communal rights) shall be given in the form of public interest (i.e. buildings) or in any other form beneficial to the local community.



## National Housing Rights Legislation



**Sudan**

Constituent Assembly Procedure Regulations (1987)

### Article 25.

The right of ownership shall be guaranteed to citizens and associations as organized by law and such property as organized by law and shall not be acquired or appropriated save for public interest and in consideration of fair compensation.

### Article 30.

Residences shall be inviolable and shall not be searched or entered save with the consent of their occupants and as in such conditions and procedures as may be specified by law.

### Article 44.

The Housing Committee is concerned with the following:

- (1) Study of national plans in the field of housing and building planning and investment in real estate;
- (2) Consideration of the legislation relating to housing and land distribution;
- (3) Discussion of problems relating to the phenomenon of illegal dwellings and the negative results of that and finding solutions and alternatives for the same.



## National Housing Rights Legislation



**Viet Nam**

Decree on Housing (1991)

### Article 2.

The State recognizes and protects the right to housing ownership by individuals and institutions.

### Article 4.

The State encourages and facilitates the participation of all organizations and individuals in the maintenance and development of the housing space.



## National Housing Rights Legislation



**Colombia**

Act No. 56 of 1985

### Article 1.

[Article 1 recognizes the right to housing of the Colombian family as an obligation of the State, a right which is necessary for the life and economic development of the community and responds to the need to harmonize the exercise of the right of ownership and its use with the public interest. Article 2 provides that a contract for rented urban accommodation is one by which two parties enter into reciprocal obligations, on the one hand to grant the total or partial enjoyment of an urban building intended for housing, and on the other to pay a specified price for such enjoyment.] <sup>(6)</sup>

### Article 24.

When eviction proceedings are initiated, as provided for under article 434 of the Code of Civil Procedure, in addition to the requirements noted therein, the following shall be taken into account:

- (i) When the defendant cannot be notified in person of the court order accepting the application within two (2) days from the date of its issue, a notice to that effect shall be posted in the entrance of the building;
- (ii) The preliminary pleas referred to in article 97 of the Code of Civil Procedure for this kind of eviction proceedings must be entered within the time-limit set for service of process;
- (iii) In the cases referred to in articles 434, sec. 10.337 and 338 of the Code of Civil Procedure, both parties shall furnish security for costs within five (5) days of the date of proceedings, equivalent to two (2) rental fees, guaranteeing compensation for any prejudice caused.



## National Housing Rights Legislation



### Jamaica Rent Restriction Act (1983)

#### Section 25.

- (1) Subject to section 26, no order or judgment for the recovery of possession of any controlled premises, or for the ejection of a tenant therefrom shall, whether in respect of a notice to quit given or proceedings commenced before or after the commencement of this Act, be made or given unless:
- (a) some rent lawfully due from the tenant has not been paid for at least thirty days after it became due; or
  - (b) some other obligation of the tenancy (whether express or implied and whether under the contract of tenancy or under this Act) has been broken or not performed and, in the case of the non-performance of any such obligation by the tenant, has been in default for at least thirty days.
  - (c) the tenant or any person residing or lodging with him or being his sub-tenant has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers or has been convicted of using the premises or allowing the premises to be used for an immoral purpose or the condition of the premises has, in the opinion of the court, deteriorated or become unsanitary owing to acts of waste or by the neglect or default of the tenant or any such person, and, where such person is a lodger or sub-tenant has not, before the making or giving of the order or judgment, taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.
  - (d) the tenant has given notice to quit, and in consequence of that notice, the landlord has contracted to sell or let the dwelling house or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession; or
  - (e) the premises, being a dwelling house or a public or commercial building, are reasonably required by the landlord for:
    - (i) occupation as a residence for himself or for some person wholly dependent upon him or for any person bona fide residing or to reside with him or for some person in his whole-time employment; or
    - (ii) use by him for business, trade or professional purposes; or
    - (iii) a combination of the purposes in such paragraphs (i) and (ii); or
  - (f) the premises, for being building land, are reasonably required by the landlord for:
    - (i) the erection of a building to be used for any of the purposes specified in paragraph (e); or
    - (ii) use by him for business, trade or professional purposes not involving the erection of a building; or
    - (iii) a combination of such purposes; or
  - (g) the premises or any portions thereof, have been compulsorily acquired under the Land Acquisition Act, or are required for the purposes of an approved scheme under the Housing Act;
  - (h) the premises, being a dwelling house or a public or commercial building, are required for the purpose of being repaired, improved or rebuilt; or
  - (i) the premises, being a dwelling house, are required for occupation as a residence by a former tenant thereof who gave up occupation in consequence of his service in any of Her Majesty's Forces during the war; or
  - (j) the premises are required for public purposes; or
  - (k) the dwelling house, or the public or commercial building, or the building erected by the tenant on building land, as the case may be, is by law to be demolished; or
  - (l) the tenant has sub-let, or parted with the possession of, the whole or any part of the premises without either obtaining the consent of the landlord or being expressly authorized by or under the tenancy agreement or lease to do so; or
  - (m) the tenant has been offered by the landlord in writing a new tenancy at a higher rent which is permissible under this Act but otherwise on the same terms as the existing tenancy and failed to accept such offer in writing within a reasonable time; or
  - (n) a dwelling-house has been let to a tenant in the employment of the landlord on condition that the tenancy shall subsist only during the continuance of such employment, or only until the expiration of a period not

exceeding one month after the termination of such employment, and the employment has terminated, or such period has expired as the case may be; or

- (o) a dwelling-house has been let to a tenant in the employment of the landlord in consequence of that employment, and the employment has terminated or the landlord has offered the tenant alternative accommodation.



## National Housing Rights Legislation



**Nigeria**

Lagos State Law No. 9 (1976)

### Section 36.

- (9)(i) It shall be unlawful for any landlord to obtain an order for possession of any accommodation under this Edict by fraud, misrepresentation or concealment of any material fact
- (9)(ii) Where any landlord has obtained an order for possession of any accommodation under this Edict and upon an application made by summons by such tenant, the tribunal is satisfied that such order was obtained by fraud, misrepresentation or the concealment of any material fact, the tribunal shall order the landlord to pay reasonable compensation to such tenant.





## National Housing Rights Legislation



### Norway

#### The House Rents Act (1939)

[This Act regulates relations between landlords and tenants. The Act contains provisions giving the tenant the right to have a court consider the validity of a notice of termination of the rent contract (sec. 38). A court of law may declare the notice of termination of the rent contract invalid if it finds that adequate pertinent grounds are lacking, or if the notice of termination is unreasonable. Rent may also be reduced by a court if the courts finds it disproportionate to the value of the dwelling concerned (sec. 35). The tenant does not have the right to sublet the dwelling without the consent of the landlord, but the tenant does have the right to include his or her own or his or her spouse's close relatives in the household, (sec. 24).]<sup>(a)</sup>



## National Housing Rights Legislation



### Republic of Korea

#### Residence Lease Protection Act (1981)

[The Residence Lease Protection Act prohibits landlords from evicting tenants by force. Also, this Act mandates just compensation for renters in case of eviction. The Act was recently amended to extend the lease period to two years unless otherwise agreed upon between the two parties. This amendment reduces evictions considerably.] [↗](#)



## National Housing Rights Legislation



### United Kingdom Housing Act (1988)

#### Section 5.

- (1) An assured tenancy cannot be brought to an end by the landlord except by obtaining an order of the court in accordance with the following provisions of this Chapter or Chapter II below or, in the case of a fixed term tenancy which contains power for the landlord to determine the tenancy in certain circumstances, by the exercise of that power and accordingly, the service by the landlord of a notice to quit shall be of no effect in relation to a periodic assured tenancy.
- (2) If an assured tenancy which is a fixed term tenancy comes to an end otherwise than virtue of -
  - (a) an order of the court, or
  - (b) a surrender or other action on the part of the tenant, then ... the tenant shall be entitled to remain in possession of the dwelling-house let under that tenancy and ... his right to possession shall depend upon a periodic tenancy arising by virtue of this section.

#### Section 27.

- (1) This section applies if, at any time after 9th June 1988, a landlord (in this section referred to as “the landlord in default”) or any person acting on behalf of the landlord in default unlawfully deprives the residential occupier of any premises of his occupation of the whole or part of the premises.
- (2) This section also applies if, at any time after 9th June 1988, a landlord (in this section referred to as “the landlord in default”) or any person acting on behalf of the landlord in default —
  - (a) attempts unlawfully to deprive the residential occupier of any premises of his occupation of the whole or part of the premises, or
  - (b) knowing or having reasonable cause to believe that the conduct is likely to cause the residential occupier of any premises —
    - (i) to give up his occupation of the premises or any part thereof, or
    - (ii) to refrain from exercising any right or pursuing any remedy in respect of the premises or any part thereof, does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, and, as a result, the residential occupier gives up his occupation of the premises as a residence.
- (3) Subject to the following provisions of this section, where this section applies, the landlord in default shall, by virtue of this section, be liable to pay to the former residential occupier, in respect of his loss of the right to occupy the premises in question as his residence, damages assessed on the basis set out in section 28 below.
- (4) Any liability arising by virtue of subsection (3) above —
  - (a) shall be in the nature of a liability in tort; and
  - (b) subject to subsection (5) below, shall be in addition to any liability arising apart from this section (whether in tort, contract or otherwise).
- (5) Nothing in this section affects the right of a residential occupier to enforce any liability which arises apart from this section in respect of his loss of the right to occupy premises as his residence; but damages shall not be awarded both in respect of such a liability and in respect of a liability arising by virtue of this section on account of the same loss.



## National Housing Rights Legislation



### Uruguay

#### Act No. 14219 (1974)

[Sec. 3 of Act No. 14219 of 1974 creates an emergency housing register. Anyone entered on the register is automatically exempt from eviction pending an adjudication of the housing by the Mortgage Bank of Uruguay. This provision protects tenants, subtenants and poor occupants with contracts dating from before 1974, and is a guarantee of enormous benefit to low-income sectors of the population.] [↗](#)



## National Housing Rights Legislation



### Sudan The Civil Code (1984)

[Article 560(1) stipulates that anyone who reclaims derelict land by building thereon is more entitled to it than others.

Article 560(2) stipulates that anyone who reclaims derelict land for essential construction purposes is the most entitled to benefit therefrom. However, at locations where development is planned and regulated, construction is not permitted in certain zones designated by the competent authority, and irregular development activities are prohibited, without the consent of the authority. Such zones must be demarcated in a clear and unequivocal manner and must pay due regard to the right of citizens to essential housing, as well as the State's obligation to promote orderly construction in accordance with a carefully studied plan.

Article 560(3) stipulates that a registered usufruct is like registered title to property and cannot be expropriated except in the public interest and in return for fair compensation depending on the type of usufruct and the real extent of its exploitation.

Article 560(4) stipulates that a usufruct which is deemed to be legitimate in accordance with the provisions of the Code, even if unregistered, is protected by law, within the limits of the actual use, and cannot be expropriated except in the public interest and in return for fair compensation.

Article 560(6) stipulates that, for purposes of the regulation and exploitation of land use, the central or regional authorities or the authorities at the national capital, as appropriate, shall take measures to demarcate, survey, level and register land, which they shall be empowered to divide into plots of equal or differing areas for uses that be regulated in a manner conducive to the assurance of a decent life for the population of each district and also for the holders of legitimate usufructs.

Article 561(b) grants usufructs in respect to agricultural land in order to encourage low-income families to settle and exploit the land for the benefit of the family or in the public interest.

Article 563 grants usufructs in respect of land and residential property on the following conditions:

- (a) The family must benefit whenever possible and feasible;
- (b) A usufruct granted in respect of residential land should not be less than 200m<sup>2</sup> in urban areas or 400m<sup>2</sup> in villages and rural areas.
- (c) Housing should preferably be situated in salubrious areas characterized by their clean air and natural environment befitting human life.] [\[10\]](#)



## National Housing Rights Legislation



### **Availability of Services, Materials, Facilities and Infrastructure**

Like security of tenure, the availability of services, materials, facilities and infrastructure are all recognized by the United Nations as essential components of adequate housing. The UN Committee on Economic, Social and Cultural Rights' General Comment No. 4 states that “an adequate house must contain certain facilities essential for health, security, comfort and nutrition” and that “all beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, potable drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, food storage, refuse disposal, site drainage and emergency services.” Unfortunately, as the national legislation included in Section 5.3 illustrates, national legislation, if available at all, doesn't mirror General Comment No. 4 and thus does not provide comprehensive protection of this key component of adequate housing. The legislation included in Section 5.3, however, provides examples of how States have incorporated elements of General Comment No. 4 in their respective national legal systems.



## National Housing Rights Legislation



### India

#### The Slum Areas (Improvement and Clearance) Act (1956)

##### Section 3. Declaration of Slum Areas

1. Where the competent authority upon report from any of its officers or other information in its possession is satisfied as respects any area that the buildings in that area —
  - (a) are in any respect unfit for human habitation; or
  - (b) are by reason of dilapidation, overcrowding, faulty arrangement and design of such buildings, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health or morals.

It may by notification in the Official Gazette, declare such area to be a slum area.

2. In determining whether a building is unfit for human habitation for the purposes of this Act, regard shall be had to its condition in respect of the following matters, that is to say —
  - (a) repair;
  - (b) stability;
  - (c) freedom from damp;
  - (d) natural light and air;
  - (e) water supply;
  - (f) drainage and sanitary conveniences;
  - (g) facilities for storage, preparation and cooking of food and for the disposal of waste water, and the building shall be deemed to be unfit as aforesaid if and only if it is so far defective in one or more of the said matters that it is not reasonably suitable for occupation in that condition.

##### Section 5. Enforcement of notice requiring execution of works of improvement

1. If a notice under section 4 requiring the owner of the building (or of the land on which the building stands, as the case may be) to execute works of improvement is not complied with, then, after the expiration of the time specified in the notice the competent authority may itself do the works required to be done by the notice.
2. All expenses incurred by the competent authority under this section together with interest at such rate as the Central Government may by order fix, from the date when a demand for the expenses is made until payment, may be recovered by the competent authority from the owner of the building (or of the land on which the building stands, as the case may be) as arrears of land revenues:

Provided that if the owner proves that he —

- a. is receiving the rent merely as agent or trustee for some other person; and
- b. has not in his lands on behalf of that other person sufficient money to satisfy by the whole demand of the authority.

His liability shall be limited to the total amount of the money which he has in his hands as aforesaid.

##### Section 19. Proceedings for eviction not to be taken without permission of competent authority

1. Notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the competent authority —
  - a. institute, after the commencement of the Slum Area (Improvement and Clearance) Amendment Act, 1964 (43 of 1964) any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in a slum area; or
  - b. where any decree or order is obtained in any suit or proceeding institute before such commencement for the eviction of a tenant from any building or land in such area, execute such decree or order.
2. Every person desiring to obtain the permission referred to in subsection (1) shall make an application in writing to the competent authority in such form and containing such particulars as may be prescribed.

3. On receipt of such application, the competent authority, after giving an opportunity to the parties of being heard and after making such summary inquiry into the circumstances of the case as it thinks fit, shall by order in writing, either grant or refuse to grant such permission.
4. In granting or refusing to grant the permission under sub-section (3), the competent authority shall take into account the following factors, namely:
  - a. whether alternative accommodation within the means of the tenant would be available to him if he were evicted;
  - b. whether the eviction is in the interest of improvement and clearance of the slum areas;
  - c. such other factors, if any, as may be prescribed.
5. Where the competent authority refuses to grant the permission, it shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the applicant.





## National Housing Rights Legislation



### New Zealand

#### The Residential Tenancies Act No. 120 (1986)

#### Part II Tenancy Agreements (Preliminary Matters)

##### Section 12. Discrimination on certain grounds prohibited -

- (1) Except with prior consent of the Tenancy Tribunal, a landlord shall not, in respect of the grant, continuance, extension, variation, termination, or renewal of a tenancy agreement, discrimination against any person on any of the following grounds:
  - (a) That the person has had a child, or is pregnant, or is not sterile;
  - (b) That it is intended that a child will reside in the premises or that a child will reside is or has been residing in the premises during the tenancy;
  - (c) That the person is unemployed or likely to become unemployed.
- (2) Except with the prior consent of the Tenancy Tribunal, a landlord shall not, in respect of the grant, continuance, extension, variation, termination, or renewal of a tenancy agreement:
  - (a) Instruct any person to discriminate against any other person on any of the grounds set out in subsection (1) of this section; or
  - (b) State an intention (whether by advertisement or otherwise) to discriminate against any person on any of those grounds.
- (3) Discrimination against any person in contravention of subsection (1) of this section, and the giving of an instruction or the stating of an intention in contravention of subsection (2) of this section, is each hereby declared to be an unlawful act.

#### Part II Tenancy Agreements (Preliminary Matters)

##### Section 45. Landlord's responsibilities -

- (1) The landlord shall:
  - (a) Provide the premises in a reasonable state of cleanliness; and
  - (b) Provide and maintain the premises in a reasonable state of repair having regard to the age and character of the premises and the period during which the premises are likely to remain habitable and available for residential purposes; and
  - (c) Comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises; and
  - (d) Compensate the tenant for any reasonable expenses incurred by the tenant in repairing the premises where -
    - (i) The state of disrepair has arisen otherwise than as a result of a breach of the tenancy agreement by the tenant and is likely to cause injury to persons or property or is otherwise serious and urgent; and
    - (ii) The tenant has made a reasonable attempt to give the landlord notice of the state of disrepair.
  - (e) Take all reasonable steps to ensure that none of the landlord's other tenants causes or permits any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises.
- (2) The landlord shall not interfere with the supply of gas, electricity, water, telephone services, or other services to the premises, except where the interference is necessary to avoid danger to any person or to enable maintenance or repairs to be carried out.
- (3) The provisions of subsection (1) of this section shall apply notwithstanding that the tenant has notice of the state of the premises at the time at which the tenancy agreement is entered into.
- (4) Nothing in subsection (1) of this section shall impose upon the landlord any obligation to repair any damage, or compensate the tenant for any want of repair, arising out of any breach, by the tenant of any obligation imposed on tenants by section 40 of this Act.

(5) In this section “premises” includes facilities.



## National Housing Rights Legislation



### **Informal Settlements: Regularisation of Informal Settlements**

Many informal settlements, such as squatter communities, exist around the world. Residents of such settlements are often at a greater risk for denial of their housing rights, including becoming victims of forced eviction, than other dwellers. Fortunately, a number of States have adopted national legislation designed to protect the housing rights of persons residing in informal settlements. These laws include regularizing, or “legalizing”, informal settlements; adverse possession (the ability to gain title to land and housing after possessing it for a certain period of time and under certain conditions); and sights and services (the provisions of infrastructure for the use of persons constructing their own housing). Samples of such national legislation appear below.



## National Housing Rights Legislation



### Algeria

Decree No. 85-212 (1985)

[“Given the extent of the illegal building problem, regulatory measures have been taken to regularize the situation where possible [this decree] determining the conditions of regularization, with respect to their rights of disposal and occupancy, of the situation of the effective occupiers of public and private land subject to title and/or supporting structures not in compliance with the regulations in force.”] [link](#)



## National Housing Rights Legislation



### Brazil

#### Statute of the City, Law No. 10-257 (June 2001)

[City Statute, establishes norms for public order and social interest which regulate the use of urban property in favour of the common good, safety and well-being of citizens, as well as environmental equilibrium.]

#### Article 2

The purpose of urban policy is to give order to the full development of the social functions of the city and of urban property, through the following general guidelines:

- I - guarantee the right to sustainable cities, understood as the right to urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, to work and leisure for current and future generations; ...
- XV - simplification of the legislation concerning subdivisions, land use, occupation and building regulations, in order to permit a reduction in costs and increase in the supply of lots and housing units;

#### Article 3

It is the responsibility of the Federal Government, in addition to its other attributions related to urban policy: ...

- IV - institute guidelines for urban development, including housing, basic sanitation, and urban transportation;

#### Article 3

It is the responsibility of the Federal Government, in addition to its other attributions related to urban policy:

- III - promote, through its own initiative and in conjunction with the States, the Federal District and the municipalities, housing construction programs and the improvement of housing conditions and basic sanitation;

### Section V: Special usucapion rights for urban property

#### Article 9

Someone who has possession of an urban area or building of up to two hundred and fifty square meters, for five years, uninterruptedly and without contestation, who uses it for their residence or that of their family, can establish their dominion, as long as they are not the owner of any other urban or real estate.

- § 1<sup>o</sup> The title of dominion will be conferred to the man or woman, or both, whether or not they are married or single.
- § 2<sup>o</sup> The rights granted in this article will not be recognized to the same possessor more than once.
- § 3<sup>o</sup> For the purposes of this article, the legitimate heir, continues to have full rights to the possession of their predecessor as long as they reside in the property at the time it was left open to succession.

#### Article 10

Urban areas with more than two hundred and fifty square meters, occupied by the low income population for their housing, for five years, uninterruptedly and without opposition, where it is not possible to identify the land occupied by each possessor, are susceptible to collective usucapions, as long as the possessors are not owners of other urban or rural property.

- § 1<sup>o</sup> The owner can, in order to count the time period required by this article, add to his possession that of his predecessor, as long as the contact is continuous for both.
- § 2<sup>o</sup> The special collective usucapion of urban real estate will be declared by the judge, through a sentence, which will serve as title to register in the real estate deeds office.
- § 3<sup>o</sup> In the sentence, the judge will attribute an equal ideal portion of the land to each possessor, independently of the size of the land that each occupies, except in the case of a written agreement among the condominiums, establishing differentiated ideal portions.

§ 4. The special condominium constituted is indivisible and cannot be terminated except by favorable determination made by at least two thirds of the members of the condominium, in the case of the execution of urbanization after the constitution of the condominium.

§ 5. The determinations related to the administration of the special condominium will be taken by a majority of votes of the condominium members present, requiring the others to comply with the decision, whether or not they agree or were absent.

#### Article 11

While the special urban action for usucapion is pending, any other actions, petitions, or possessions that come to be proposed relative to the real estate subject to usucapion will be stayed,

#### Article 12

Legitimate parties for the proposal of an action for special urban usucapion include:

I - the possessor, in isolation, in group or supervenient;

II - the possessors, in a state of co-possession;

III - as a processual substitute, an association of community residents, duly established, with legal standing, as long as it is explicitly authorized by those it represents.

§ 1. In the action of special urban usucapion, intervention by the Attorney General is required.

§ 2. The author should have all the benefits of the courts and of free legal assistance, as well as in the real estate deeds office.

#### Article 13

Special usucapion for urban real estate can be invoked as a matter of defense, with the sentence that recognizes it considered valid title to be registered in the real estate deeds office.

#### Article 14

In the legal action of special urban real estate usucapion, the processual writ to be observed is a summary action.



## National Housing Rights Legislation



### Brazil

Statute of the City, Provisional Measure No. 2.220 (4 September 2001)

#### CHAPTER I: OF THE SPECIAL USE CONCESSION

##### Article 1

Whomever, until June 30, 2001, possesses as his or her own, for five years, without interruption and without opposition, up to two hundred and fifty square meters of public real estate located in an urban area, using it for their own residence or that of their family, has the right to concession of special use for housing purposes in relation to the property that is the object of said possession, as long as he is not the owner or concessionaire, in any form, of any other urban or rural real estate.

- § 1º The concession for special use for housing purposes will be conferred free of charge to the man or woman, or both, independent of their marital status.
- § 2º The right established by this article shall not be recognized to the same concessionaire more than once.
- § 3º For the purposes of this article the legitimate heir, can continue, with complete rights, on the possession of his or her predecessor, as long as he or she resided in the property since the time of the opening of the succession.

##### Article 2

In the properties indicated in art. 1o, with more than 250 square meters, which, until June 30, 2001, were occupied by a low income population for housing purposes, for five years, uninterruptedly and without opposition, where it was not possible to identify the land occupied by each possessor, the special use concession for housing purposes will be conferred in a collective form, as long as the possessors are not property owners or concessionaires, in any way, of other urban or rural property.

- § 1º The possessor can, in order to calculate the period required by this article, add to their possession that of their predecessor, as long the contact was continuous to both.
- § 2º In the special use concession established by this article, an equal ideal fraction of land will be attributed to each possessor, independently of the size of the land that each occupies, unless there is a written accord among the occupants, establishing distinct ideal fractions.
- § 3º The ideal fraction attributed to each possessor cannot be superior to two hundred and fifty square meters.

##### Article 3

The option to exercise the rights established in arts. 1o and 2o will also be guaranteed to the occupants, regularly inscribed, in public real estate, of up to two hundred and fifty square meters, of the Federal government, the States, the Federal District and the municipalities, which are located in an urban area, as determined by the regulation.

##### Article 4

In a case where the occupation involves a risk to the lives or to the health of the occupants, the government will guarantee the possessor the exercise of the right established by arts. 1o and 2o in another location.

##### Article 5

The Government is responsible for assuring the exercise of the rights established in arts. 1o and 2o in another location in the case of occupation of the real estate:

- I - for common use of the people;
- II - destined for an urbanization project;
- III - of interest for national defense, environmental preservation and protection of natural ecosystems;
- IV - reserved for construction of reservoirs and related works; or
- V - located in a communication route.

##### Article 6

The title for special use concession for housing purposes will be obtained by the administrative route through the competent Public Administrative organ, or, in case of its refusal or omission, by judicial decree.

- § 1. The Public Administration will have a maximum period of 12 months to determine the request, counting from the date it is received.
- § 2. In the case of a real estate property of the federal government or the states, the interested party must instruct the requirement for special use concession for housing purposes with a certificate issued by the municipal government, which attests that the real estate is located in an urban area and is destined for the housing of the occupant or his or her family.
- § 3. In case of legal action, the special use concession for housing purposes will be declared by a judge, through a sentence.
- § 4. The title issued by administrative procedure or judicial sentence will serve for the purpose of the registration in the real estate deeds office.

#### Article 7

The right to special use concession for housing purposes is transferable inter vivos or because of death.

#### Article 8

The right to special use concession for housing purposes is extinguished in the case:

- I - the concessionaire uses the real estate for a purpose other than for housing for themselves or for their family; or
- II - the concessionaire acquires the property or the use concession of another urban or rural real estate.  
Sole paragraph. The termination indicated in this article will be recorded in the real estate deed office, by means of a declaration of the issuing public authority.

#### Article 9

It is the responsibility of the competent public authority to authorize the use to whom, until June 30, 2001, possesses as his own, for five years uninterruptedly and without opposition, up to two hundred and fifty square meters of public real estate located in an urban area, using it for commercial purposes.

- § 1. The authorization for use determined by this article is conferred free of charge.
- § 2. The possessor can, for the purpose of counting the period required by this article, add to his possession that of his predecessor, as long as the contact is continuous for both.
- § 3. The authorization for use called for in the caput of this article, is subject to the dispositions of arts. 4o and 5o of this Provisional Measure.





## National Housing Rights Legislation



India

Madhya Pradesh Act No. 15 (1984) (Slum Dwellers Protection Act)

### Section 3. Settlement of Land

- (1) Notwithstanding anything contained in any law for the time being in force, the land occupied by a landless person in any urban area on the 10th day of April 1984 shall subject to the provisions of sub-section (2) be deemed to have been settled in his favour on the said date.
- (2) The Authorized Officer may either settle the land in actual occupation of the landless person not exceeding 50 sqr. metres in leasehold rights in his favour any other land up to 50 sqr. metres.
- (3) The leasehold rights accrued under sub-section (1) shall not be transferable by sub-lease or in any other manner whatsoever except by inheritance.
- (4) If the landless person to whom leasehold rights have accrued in respect of any land under this Act, transfers such land on contravention of the provisions of sub-section (3), the following consequences shall ensue, namely —
  - (i) the lease shall stand cancelled on the date of such transfer;
  - (ii) such transfer shall be null and void;
  - (iii) no leasehold rights shall accrue to the transferee in respect of such land.

### Section 4: Restoration of Possession

- (1) If any landless person to whom leasehold rights have accrued in the land under section 3 is dispossessed from that land or any part thereof otherwise than in due course of law, the Authorized Officer shall on an application made to him by the said landless person within six months from the date of dispossession restore such possession...

### Section 5: Penalty

- (1) Any person who — (i) wrongfully dispossesses or attempts to dispossess an occupier of a dwelling house; or (ii) recovers or attempts to recover rent in any manner from an occupier of dwelling house — shall be punished with rigorous imprisonment which shall not be less than three months.



## National Housing Rights Legislation



### Pakistan Sind Katchi Abadis Act (1987)

#### Section 11.

(2) Subject to the provisions of the Act, the Authority shall exercise such powers and perform such functions as may be necessary for carrying out the purposes of the Act. Following functions are in Section 11(2) of the Act:

- i) implement policies formulated by Government for the development or improvement of the areas of the Katchi Abadis and regularization of such Katchi Abadis.
- ii) Lay-down guidelines for the implementation of such policies by the concerned authorities;
- iii) identify the Katchi Abadis or areas thereof which may be developed, improved or regularized under this Act and also identify the Katchi Abadis or areas which cannot be regularized as Katchi Abadis.
- iv) arrange or carry out detailed physical surveys, census of occupants of the Katchi Abadis and prepare or cause to be prepared plans and amelioration plans, and designs of infrastructural works in connection with the regularization and development of the Katchi Abadis;
- v) formulate development and financial programmes in respect of the Katchi Abadis and determine implementation strategy of such programmes;
- vi) Oversee the operation of the fund;
- vii) evict or cause to be evicted unauthorized persons or remove or cause to be removed encroachments from a Katchi Abadi or any area which is not regularisable as Katchi Abadis in accordance with the law for the time being in force;
- viii) acquire, hold, control and administer, movable or immovable property or dispose of such property;
- ix) prepare or cause to be prepared scheme or schemes and execute or cause to be executed such scheme or schemes.
- x) undertake, where necessary, low cost housing and re-development schemes for resettlement of shiftees from the Katchi Abadis and the areas which are not regularisable as Katchi Abadis;
- xi) enter into and perform contracts;
- xii) incur expenditures for carrying out the purposes of this Act;
- xiii) arrange civic amenities and civic services in the Katchi Abadis through the Councils or other concerned agencies;
- xiv) take such steps as may be necessary or conducive to the attainment of the objects of the Authority.



## National Housing Rights Legislation



### Peru

#### Law for the Promotion of Access to Formal Property Legislative Decree No. 803 (1996)

[The Peruvian Law for the Promotion of Access to Formal Property (Ley de Promoción del Acceso a la Propiedad Formal – Decreto Legislativo N.º 803) declares that providing Peruvian citizens access to formal property, and providing a mechanism for the registration of property, are in fact matters of national importance. The law further recognizes that such measures are necessary to the protection of the basic property rights of citizens. To this aim, Title 1, Article 2 of the law provides for the creation of an autonomous Commission for the Formalization of Informal Property (Comisión de Formalización de la Propiedad Informal – COFOPRI) which has responsibility, inter alia, for formulating, approving and executing a Programme for the Formalization of Property (as stipulated in Title 1, Article 3). The law also addresses the reorganization of administrative procedures and processes for the formalization of property (Title 2), the appropriation of state lands for the purposes of providing housing (Title 3), and other complementary provisions (Title 4).

English translation is unavailable at this time. The full Spanish text appears below.]

#### Ley de Promoción del Acceso a la Propiedad Formal

#### Decreto Legislativo N.º 803 (1996)

#### EL PRESIDENTE DE LA REPUBLICA

#### POR CUANTO:

La propiedad predial constituye la mayor parte de los activos de los peruanos de menores recursos y, sin embargo, no puede ser utilizada en el mercado legal pues carece de un título debidamente registrado que le confiera valor de intercambio;

Los procedimientos vigentes que debe cumplir esta mayoría de peruanos para titular y registrar sus activos constituyen un régimen discriminatorio que los obliga a perder muchos años en trámites y realizar un cuantioso gasto;

Los títulos otorgados por los procedimientos vigentes han carecido del valor suficiente para movilizar créditos e inversiones en servicios básicos sostenibles;

Es necesario crear un sistema único de formalización de la propiedad que permita la incorporación de los activos de la mayoría de los peruanos a una economía social de mercado para que puedan ser identificados, ubicados y representados en instrumentos de aceptación universal, regidos por un marco institucional que facilite su intercambio;

El sistema generara el incremento del valor de los predios de los peruanos de menores recursos;

Sin acceso a la formalización de sus activos principales, la mayoría de los peruanos no puede beneficiarse plenamente de la nueva política económica, que incluye estabilización de la moneda y privatización;

La mayoría de los peruanos al no contar con un acceso legal efectivo a la propiedad predial recurre al acceso extra legal, como la invasión, atentando contra la seguridad de los pocos que han logrado registrar su propiedad y propiciando la apropiación ilícita de los servicios básicos, sobre todo luz y agua;

El Congreso de la Republica, mediante Ley N.º. 26557 ha transferido al Poder Ejecutivo las competencias y procedimientos municipales relacionados con la adjudicación, el saneamiento físico-legal, la titulación y la habilitación urbana, otorgándole la facultad de legislar por un plazo de 120 días el saneamiento físico-legal, de asentamientos humanos en terrenos de propiedad fiscal, municipal o privada mediante la reforma de las competencias, de las entidades publicas y de los procedimientos relacionados con la formalización de la propiedad en todas sus etapas, así como la creación de un organismo especializado encargado de diseñar y ejecutar un programa nacional de formalización que incluya el reconocimiento, la adjudicación, el saneamiento físico-legal, la titulación, la habilitación urbana y el registro de la propiedad predial de la población de menores recursos, así como sobre normas relacionadas a impuestos, contribuciones, aportaciones y demás tributos;

Asimismo, el Congreso de la Republica mediante la Octava Disposición Transitoria y Final de la Ley N.º. 26533 ha delegado facultades legislativas al Poder Ejecutivo por un plazo de 360 días para llevar a cabo un proceso de

modernización integral en la organización de las entidades que lo conforman;

Con el voto aprobatorio del Consejo de Ministros; y

Con cargo a dar cuenta al Congreso de la Republica;

Ha dado el Decreto Legislativo siguiente:

## LEY DE PROMOCION DEL ACCESO A LA PROPIEDAD FORMAL

### TITULO I

#### DE LA ENTIDAD PROMOTORA DEL ACCESO A LA PROPIEDAD FORMAL

##### Artículo 1.-

Declarase de interés nacional la promoción del acceso a la propiedad formal y su inscripción registral con el fin de garantizar los derechos de todos los ciudadanos a la propiedad y al ejercicio de la iniciativa privada en una economía social de mercado, establecidos por el inciso 16) del Artículo 2°. y los Artículos 58°. y 70°. de la Constitución Política.

##### Artículo 2.-

Crease la Comisión de Formalización de la Propiedad Informal (COFOPRI), como organismo rector máximo encargado de diseñar y ejecutar de manera integral, comprensiva y rápida un Programa de Formalización de la Propiedad y de su mantenimiento dentro de la formalidad, a nivel nacional, centralizando las competencias y toma de decisiones a este respecto.

La inscripción de los títulos de propiedad formalizados por COFOPRI se realizara en el Registro Predial Urbano a que se refiere el Artículo 10°. de la presente Ley.

COFOPRI constituye un pliego presupuestal con autonomía técnica, funcional, administrativa, económica y financiera. Sus integrantes son designados mediante Resolución Suprema y reportaran directamente al Presidente de la Republica. Será presidida por un Ministro de Estado, que ejercerá la titularidad del pliego presupuestal.

La presente ley crea un nuevo mecanismo institucional que permitirá que la propiedad predial de los sectores informales de menores recursos se pueda convertir en activos líquidos que puedan integrarse al mercado y ser objeto de transacciones; incrementando el valor de las propiedades y posibilitando a sus propietarios el acceso a los servicios de infraestructura básica.

##### Artículo 3.-

Para cumplir el objetivo del Artículo 2°. de la presente ley, son funciones de COFOPRI:

- a) Formular, aprobar y ejecutar un Programa de Formalización de la Propiedad de ámbito nacional que prevea su implementación progresiva, comprendiendo las acciones de identificación y calificación de asentamientos humanos; adjudicación de predios del Estado; promoción y saneamiento físico-legal de los predios; regularización de la habilitación urbana; regularización del tracto sucesivo; titulación; y, promoción del acceso al registro de la propiedad predial en asentamientos humanos, urbanizaciones populares y otros centros poblados que determine COFOPRI, asumiendo las competencias respectivas;
- b) Crear y poner en funcionamiento los mecanismos para promover que las transacciones sobre las propiedades formalizadas se mantengan dentro de la formalidad, cuidando que los costos de esta sean inferiores a los de la informalidad.
- c) Proponer al Presidente de la Republica los dispositivos legales complementarios, su reglamentación y las demás disposiciones que fueran necesarias para el cumplimiento del objetivo principal del Programa de Formalización de la Propiedad a que se refiere el Artículo 2°. de la presente ley;
- d) Asumir, de manera exclusiva y excluyente, las competencias correspondientes a la formalización hasta el otorgamiento de los títulos de propiedad. No esta incluida en esta función el registro de los títulos emitidos por COFOPRI, que estará a cargo del Registro Predial Urbano. Para ejercer sus competencias, COFOPRI dictara, mediante acuerdo de sus miembros, directivas que serán de obligatorio cumplimiento para todas las entidades del Estado vinculadas al proceso de formalización de la propiedad, desde que sean notificadas. Las directivas podrán ser publicadas si así lo determina dicha entidad; podrán ser publicadas si así lo determina dicha entidad;
- e) Proponer la creación de las condiciones institucionales necesarias para el desarrollo de la inversión privada y publica en la prestación de servicios complementarios relacionados con la propiedad, que incluyan la infraestructura de servicios públicos, el crédito y otros;
- f) Aprobar su presupuesto y administrar los recursos financieros provenientes del Tesoro Publico y del Fondo a

que se refieren los Artículos 6.º y 7.º de la presente ley, que se requieran para la ejecución del Programa de Formalización de la Propiedad. COFOPRI podrá encargar la administración, fiscalización y auditoría de dichos recursos a organismos multilaterales o instituciones privadas especializadas, mediante Resolución Suprema.

- g) Celebrar todo tipo de convenios, contratos y acuerdos con instituciones nacionales, extranjeras e internacionales; y,
- h) Las demás que le asigne la presente ley.

#### Artículo 4.-

Para la ejecución de las actividades que integren el Programa de Formalización de la Propiedad y la elaboración de propuestas y estudios relacionados con sus competencias COFOPRI podrá contratar a instituciones privadas.

#### Artículo 5.-

COFOPRI contará con una Gerencia General cuyas principales funciones serán:

- a) Ejecutar los acuerdos de COFOPRI y reportar su cumplimiento directamente a ella;
- b) Supervisar, dirigir y coordinar las actividades de COFOPRI y las instituciones privadas especializadas contratadas;
- c) Representar a COFOPRI; y,
- d) Las demás que le asigne COFOPRI y el Reglamento de la presente.

El Gerente General será designado mediante Resolución Suprema, a propuesta del Ministro que preside COFOPRI.

#### Artículo 6.-

Son recursos de COFOPRI los siguientes:

- a) Los que le otorgue la Ley Anual de Presupuesto y sus modificatorias; y,
- b) Otros recursos asignados de otras fuentes y fondos.

#### Artículo 7.-

Crease el Fondo de Promoción del Acceso a la Propiedad Formal (FOPROP), cuyos recursos serán destinados a financiar las actividades a que se refiere esta ley. La dirección del FOPROP corresponde a COFOPRI. Son recursos del FOPROP:

- a) Las donaciones y legados en efectivo y en especie otorgadas por personas naturales y jurídicas, los créditos internos y externos de fuentes bilaterales o multilaterales y los provenientes de la cooperación técnica internacional, que se obtengan para el cumplimiento de esta ley;
- b) Los ingresos propios que generen la administración de los recursos del FOPROP, incluyendo intereses, y los generados por la información y servicios que brinde; y,
- c) Otros recursos que se le asigne provenientes de otras fuentes y fondos.

#### Artículo 8.-

El personal de COFOPRI está comprendido en el régimen laboral de la actividad privada.

### TITULO II

## DE LA REORGANIZACION ADMINISTRATIVA Y LOS PROCESOS PARA LA FORMALIZACION DE LA PROPIEDAD

#### Artículo 9.-

Las dependencias e instancias de las municipalidades provinciales, las entidades del Ministerio de Transportes, Comunicaciones, Vivienda y Construcción, la Superintendencia de Bienes Nacionales, la Empresa Nacional de Edificaciones (ENACE) y las demás entidades públicas que hubiesen estado dotadas de competencias vinculadas con el proceso de formalización y/o cuente con información o documentación relacionada con dicho proceso, ajustarán sus actividades a esta ley y a las directivas que dice COFOPRI, transfiriéndole a su requerimiento todo el acervo documentario del que dispongan y colaborando con las acciones que ella ejecute, bajo responsabilidad del titular del pliego. Artículo 10.-

El Registro Predial de ámbito urbano, a que se refieren los Decretos Legislativos Nos. 495 y 496, en adelante el

Registro Predial Urbano, es una institución pública descentralizada, con autonomía registral, técnica, administrativa, económica y financiera, constituye un pliego presupuestal, y goza de todas las garantías establecidas por el Artículo 3º. de la Ley N.º. 26366, es decir:

- a) La autonomía de sus funcionarios en el ejercicio de sus funciones registrales;
- b) La intangibilidad del contenido de los asientos registrales, salvo título posterior, sentencia judicial o laudo arbitral firme;
- c) La seguridad jurídica de los derechos de quienes se amparan en la fe del Registro; y
- d) La indemnización por los errores registrales, sin perjuicio de las demás responsabilidades que correspondan conforme a ley.

El Registro Predial Urbano dependerá sectorialmente del Ministerio cuyo titular presida la COFOPRI. Este Ministerio asume las competencias sectoriales que sobre dicho Registro ejercía la Superintendencia Nacional de los Registros Públicos (SUNARP).

El Registro Predial de Lima se integra al Registro Predial Urbano y mantiene, por excepción, sus competencias sobre el ámbito rural del departamento de Lima.

Los Registros Prediales Rurales Regionales, a que se refiere el Decreto Legislativo N.º. 667, deberán instalarse en el resto del país específica y exclusivamente para el ámbito rural, conforme a su propia normatividad.

El Registro Predial Urbano se rige por los Decretos Legislativos Nos. 495 y 496, sus reglamentos y directivas, en todo aquello que no sea modificado por la presente ley y sus reglamentos.

El Registro Predial Urbano se encuentra facultado para emitir sus directivas registrales, fijar las tasas y derechos por los servicios e información que suministre a terceros y nombrar, sancionar y remover a sus registradores, a los Registradores Especiales a que se refiere el artículo siguiente y a sus demás trabajadores. El personal del Registro Predial Urbano está comprendido en el régimen laboral de la actividad privada.

El Ministro a cuyo sector pertenece el Registro Predial Urbano nombrará, sancionará y removerá a la máxima autoridad de dicho Registro y aprobará un nuevo Estatuto que sustituya su estructura orgánica y funcional aprobada por el Decreto Legislativo N.º. 496 y la Resolución N.º. 078 95 SUNARP;

#### Artículo 11.-

Para el cumplimiento de los objetivos de la presente ley, los Registradores Especiales designados por el Registro Predial Urbano, tendrán acceso a la información registral del Registro de la Propiedad Inmueble, del Registro de Personas Jurídicas y de todo otro registro del Sistema Nacional de los Registros Públicos que cuenten con información registral necesaria para la formalización de la propiedad.

Los Registradores Especiales solicitarán al registrador público encargado el bloqueo, traslado y cancelación de las partidas registrales con sus respectivas copias, así como los certificados de vigencia de poderes que requieran. Vencido el plazo de cinco días a que se refiere la octava disposición complementaria de la Ley N.º. 26366 modificada por la Ley N.º. 26434, los Registradores Especiales ejecutarán directamente los actos mencionados.

Las contiendas de competencia relacionadas con el traslado de partidas registrales que pudieran generarse, serán resueltas en última instancia por la máxima autoridad del Registro Predial Urbano.

#### Artículo 12.-

Los titulares de predios ubicados en urbanizaciones populares y centros poblados incorporados al Programa de Formalización, que se encuentren poseyéndolos y cuenten con títulos de propiedad que no puedan ser inscritos por presentar deficiencias en la continuidad de las transmisiones de dominio que preceden a su derecho, podrán solicitar a COFOPRI, directamente o a través de los representantes de las organizaciones que integran, la regularización de la inscripción de su derecho de propiedad.

De ser resuelta favorablemente la solicitud, COFOPRI expedirá la resolución que los declare propietarios y comunicará al Registro Predial Urbano para que proceda a cancelar las inscripciones existentes respecto del predio y a inscribir su derecho de propiedad en la forma, plazos y mediante los medios de publicidad que tutelen los derechos de terceros, que se establezcan en el reglamento.

El mismo derecho corresponde a quienes, al amparo de lo establecido por el Artículo 950.º del Código Civil, hayan adquirido predios en urbanizaciones populares y centros poblados incorporados al Programa de Formalización.

#### Artículo 13.-

Con el fin de dar cumplimiento a lo previsto en la presente ley y por razones operativas, COFOPRI asume la titularidad de los terrenos estatales, fiscales y municipales ocupados por asentamientos humanos en proceso de saneamiento físico-legal, para lo cual se inscribirá automáticamente dicha titularidad en el Registro respectivo.

COFOPRI no adjudicará más de una propiedad a un mismo titular dentro del ámbito de una misma provincia.

#### Artículo 14.-

Los contratos de transferencia de propiedad emitidos por la Corporación Nacional de la Vivienda, la Junta Nacional de la Vivienda, la Oficina Nacional de Pueblos Jóvenes, SINAMOS o ENACE serán inscritos en el Registro Predial Urbano por el simple mérito de su presentación por el titular con su respectiva declaración jurada, la que quedará sujeta a las verificaciones previstas en la Ley N.º 25035, de Simplificación Administrativa.

Asimismo, de existir adeudos pendientes ante entidades crediticias, bancarias o financieras en liquidación (como el Banco Central Hipotecario, el Banco de la Vivienda y las Mutuales), presentarán el recibo de cancelación y la correspondiente declaración jurada.

#### Artículo 15.-

Los programas de vivienda ejecutados por el Estado que a la fecha de vigencia de la presente ley, no hubiesen culminado su proceso de formalización, incluyendo el registro de la titulación individual, serán regularizados por COFOPRI trasladando las partidas matrices al Registro Predial Urbano, en la forma y plazos que se establezca mediante directiva de COFOPRI.

#### Artículo 16.-

COFOPRI constituye la última instancia administrativa para resolver, de manera directa o mediante delegación, las peticiones y reclamos de carácter particular presentados por los interesados durante la ejecución del Programa de Formalización de la Propiedad, respecto de:

- a) Los asuntos de su competencia establecidos en el Artículo 3.º y otras normas de la presente Ley;
- b) La representación legal de las organizaciones para los fines de la formalización de la propiedad de sus integrantes;
- c) Los problemas de colindancia entre predios correspondientes a dos o más organizaciones y entre predios de los individuos que las integran;
- d) La determinación del titular del derecho a la adjudicación de la propiedad individual;
- e) La determinación del titular del derecho de propiedad en los procedimientos a que se refiere el Artículo 12.º de la presente ley; y,
- f) Otros asuntos que establezcan el reglamento.

Las resoluciones que sobre las materias señaladas dicta COFOPRI, o sobre aspectos registrales del Registro Predial Urbano, agotan la vía administrativa, causan estado y podrán ser impugnadas por los interesados exclusivamente ante el Sistema Arbitral Especial de la Propiedad a que se refiere el Artículo 17.º de la presente ley, para la resolución definitiva del derecho que corresponda.

La impugnación ante el Sistema Arbitral de la Propiedad deberá interponerse en el plazo de cinco (5) días hábiles posteriores a su notificación o publicación y COFOPRI o el Registro Predial Urbano, según corresponda la remitirá al Sistema Arbitral. La impugnación interpuesta suspende la ejecución de la resolución emitida por COFOPRI.

El reglamento fijará los procedimientos, requisitos instancias y plazos respectivos.

#### Artículo 17.-

Establézcase un Sistema Arbitral Especial de la Propiedad para la solución de los conflictos, las controversias, declaraciones, determinación de mejor derecho, incertidumbre jurídicas o de hecho, jurídica o factualmente trascendentes, que se produzcan en los asentamientos humanos, urbanizaciones populares y centros poblados que sean incorporados al Programa de Formalización de la Propiedad, para lo cual el Sistema tendrá competencia territorial sobre dichas áreas. Esta incorporación genera, de pleno derecho, la aceptación previa, automática y expresa de un convenio arbitral por parte de los integrantes de dichas poblaciones, así como su sometimiento a la jurisdicción arbitral creada por esta ley. No se admitirá renuncia, reserva o pacto en contrario, entendiéndose que para ello dicho acto se halla dentro del supuesto normativo de la Primera Disposición Complementaria y Transitoria de la Ley General de Arbitraje N.º 26572.

El Sistema Arbitral también tendrá competencia territorial en las áreas rurales del departamento de Lima que sean incorporadas al Programa de Formalización de la Propiedad.

El Sistema Arbitral Especial de la Propiedad tendrá facultad exclusiva y excluyente de toda otra Jurisdicción para resolver, de oficio o a petición de parte, las siguientes materias:

- a) La definición de su propia competencia.

- b) Las impugnaciones que presenten los interesados contra las resoluciones de carácter particular que emita COFOPRI de manera directa o delegada y causen estado; y
- c) Las demás que se establezcan en el Reglamento.

Los jueces se abstendrán, de oficio o a petición de parte, de conocer las materias que se sometan a su conocimiento cuando corresponda al Sistema Arbitral Especial de la Propiedad, debiendo declarar la nulidad de todo lo actuado y el archivamiento definitivo del proceso en el estado en que se encuentre, bajo responsabilidad civil, administrativa y penal.

Los aludos expedidos por el Sistema Arbitral Especial de la Propiedad son definitivos, tienen la calidad de cosa juzgada material y contra ellos no procede acción, pretensión, recurso o impugnación ordinaria o extraordinaria alguna ante el Poder Judicial, que deberá declarar inadmisibles, bajo responsabilidad civil, administrativa y penal, cualquier petición que pretenda contravenir esta disposición.

El Órgano de Gobierno del Poder Judicial designará en cada Distrito Judicial, Juzgados Civiles de Primera Instancia para el conocimiento del trámite de ejecución de los laudos expedidos por el Sistema Arbitral Especial de la Propiedad. Estos Juzgados Civiles ejecutarán los laudos dentro del tercer día de remitidos por el Sistema Arbitral dentro del tercer día de remitidos por el Sistema Arbitral Especial de la Propiedad, con citación de los interesados y de los terceros legitimados apersonados al procedimiento arbitral. COFOPRI, el Registro Predial Urbano, cualquier otra dependencia estatal, así como las personas naturales y jurídicas cumplirán lo dispuesto en el laudo. Contra la orden de ejecución del laudo no procede recurso o articulación alguna que impida o pretenda retrasar dicha ejecución, bajo responsabilidad civil, administrativa, funcional y penal del Juez respectivo. Cualquier apelación que fuese concedida se entenderá otorgada sin efecto suspensivo, siendo nula de pleno derecho cualquier disposición o estipulación en contrario, bajo responsabilidad.

Un reglamento especial establecerá la dirección y administración del sistema, el número y las condiciones de los árbitros, el procedimiento, los plazos y las demás características del Sistema Arbitral Especial de la Propiedad.

En todo lo no previsto en la presente ley y su reglamento, rige supletoriamente lo establecido en la Ley General de Arbitraje y el TUO del Código Procesal Civil para el Proceso de Ejecución, con excepción de lo dispuesto en sus Artículos 700. y 702.

#### Artículo 18.-

Las reclamaciones planteadas con posterioridad a la inscripción definitiva de un predio en el Registro Predial Urbano, dirigidas a enervar el título en virtud del cual se extendió la primera inscripción individual de propiedad de un predio cuya matriz se encuentra inscrita en dicho Registro, podrán ser interpuestas ante el órgano jurisdiccional respectivo conforme a los procedimientos vigentes, siempre que la reclamación no haya sido resuelta, consentida o ejecutoriada previamente en la vía administrativa de manera directa o delegada, por COFOPRI o el Registro Predial Urbano, o en la jurisdicción del Sistema Arbitral Especial de la Propiedad.

Las reclamaciones se dirigirán contra el titular con derecho inscrito y, si fueran declaradas fundadas, darán únicamente derecho a que se ordene el pago de una indemnización de carácter pecuniario por daños y perjuicios en favor del demandante. En tales casos el titular con derecho inscrito mantendrá la validez legal de su título e inscripción, los que serán incontestables mediante acción, pretensión o procedimiento alguno, y quedará obligado al pago de la indemnización aludida.

Las acciones a que se refiere el presente artículo caducarán en el plazo establecido en el inciso 4) del Artículo 2001. del Código Civil.

### TITULO III

#### DE LA ADJUDICACION DE TIERRAS DEL ESTADO CON FINES DE VIVIENDA

#### Artículo 19.-

Declarase de interés nacional el establecimiento de un proceso único y simplificado para el acceso a la propiedad predial de terrenos del Estado para los sectores de menores recursos, que garantice que:

- a) La población de menores recursos pueda acceder a la propiedad de terrenos con fines de vivienda, sin necesidad de recurrir a invasiones de tierras estatales o privadas;
- b) El Estado cuente con la información sobre las tierras de su propiedad que pueden ser adjudicadas a la población para satisfacer sus necesidades de vivienda, y
- c) El Estado pueda responder a la demanda de terrenos para fines de vivienda de manera ordenada, sobre la base de una administración de las tierras estatales disponibles para dicho fin, que permita la ejecución de programas de adjudicación.



#### Artículo 20.-

Aquellos terrenos de propiedad estatal que hubieran sido invadidos o ocupados ilegalmente con posterioridad al 31 de octubre de 1993 y sus ocupantes, se adeudaran a lo dispuesto en el presente Título III, siguiendo el procedimiento de adjudicación de tierras establecido por los Artículos 19.º al 27.º de la presente Ley.

La posesión inmediata, directa y física de un terreno del Estado por invasión u otro medio de ocupación ilegal, con posterioridad al 31 de octubre de 1993, no genera derecho expectatio alguno.

COFOPRI no adjudicará los terrenos ocupados ilegalmente a sus propios poseedores. Dichos poseedores deberán inscribirse en el Padrón a que se refiere el Artículo 27.º de la presente ley, a efectos de que sean considerados en alguno de sus programas de adjudicación.

#### Artículo 21.-

La formalización y adjudicación de la propiedad en terrenos del Estado para fines urbanos se ceñirá a lo dispuesto en la presente ley y sus reglamentos, los que se ajustaran a los principios de la Ley N.º 25035, de Simplificación Administrativa.

#### Artículo 22.-

Las municipalidades provinciales definirán las áreas de expansión urbana dentro de su jurisdicción, precisando e informando a COFOPRI lo siguiente:

- a) Los límites y las áreas correspondientes a la expansión urbana;
- b) Las áreas reservadas de equipamiento social (para educación, salud y recreación);
- c) La proyección de los esquemas viales primarios y secundarios con el fin de realizar las reservas de áreas respectivas; y,
- d) Los terrenos no aptos para fines de vivienda por constituir zonas riesgosas; carentes de las condiciones de higiene y salubridad; zonas con valor histórico; zonas de explotación minera; y, zonas reservadas para la defensa nacional, determinados en coordinación con las entidades públicas encargadas.

El reglamento establecerá la forma, los plazos, el mecanismo y las condiciones mediante los cuales COFOPRI asegurará la ejecución de lo dispuesto en el presente artículo.

#### Artículo 23.-

No podrán ser objeto de adjudicación para fines de vivienda, las áreas a que se refieren los incisos b), c) y d) del Artículo 22.º de la presente ley, ni los de propiedad privada.

#### Artículo 24.-

El Registro Predial Urbano inscribirá automáticamente a nombre del Estado las áreas reservadas a que se refieren los incisos b) y c) del Artículo 22.º de la presente ley, a fin de proteger el crecimiento ordenado de la ciudad.

#### Artículo 25.-

COFOPRI elaborará el Inventario de Tierras para fines de Vivienda, sobre la base de la información proporcionada por las municipalidades provinciales, la que incluirá las tierras estatales disponibles y los elementos que faciliten establecer el precio de los terrenos que serán materia de adjudicación.

#### Artículo 26.-

COFOPRI aprobará el Plano Perimétrico de Trazado y Lotización de los terrenos objeto de adjudicación, el mismo que será inscrito en el Registro Predial Urbano a nombre de COFOPRI.

#### Artículo 27.-

COFOPRI llevará un Padrón de Solicitantes de Terrenos para Vivienda, en el que se inscribirán los interesados que no cuenten con otra propiedad predial urbana en la provincia.

La prioridad para la adjudicación de los terrenos solicitados se regulará teniendo como base el orden de inscripción en el Padrón.

### TITULO IV

#### DISPOSICIONES COMPLEMENTARIAS,

## TRANSITORIAS Y FINALES

### Artículo 28.-

El Programa de Formalización de la Propiedad, que incluye el Sistema Arbitral Especial a que se refiere el Artículo 17. de la presente ley, se pondrá en funcionamiento progresivamente en todo el país, de acuerdo a un cronograma que establecerá COFOPRI mediante directiva.

Los procedimientos en trámite en las zonas en que COFOPRI asuma competencia, serán resueltos por dicha entidad de acuerdo a las disposiciones establecidas en sus reglamentos y directivas.

### Artículo 29.-

En tanto no se emitan las directivas a que se refiere el artículo anterior, las entidades públicas que a la fecha de vigencia de la presente ley se encontraban dotadas de competencias relacionadas con la formalización de la propiedad, continuarán ejerciéndolas hasta que sean notificadas por COFOPRI. En tanto no se apruebe su Estatuto, el Registro Predial de Lima culminará su proceso de reorganización, cubriendo las plazas vacantes.

Todas las entidades mencionadas aplicarán a los procedimientos en trámite lo dispuesto en los Decretos Legislativos Nos. 495 y 496 y los Decretos Supremos N.º 001-90-VC y 002 90 VC.

### Artículo 30.-

Las municipalidades provinciales aplicarán el Reglamento de Habilitación Urbana para Urbanizaciones Populares aprobado por el Decreto Supremo N.º 001 90 VC.

Las urbanizaciones populares que cuenten con construcciones consolidadas, quedarán automáticamente incorporadas al área de expansión urbana de la municipalidad provincial correspondiente y, en tanto las referidas municipalidades no le asignen bonificación, tendrán una zonificación residencial de densidad media.

### Artículo 31.-

Modifícase el inciso d) del Artículo 2.º del Decreto Legislativo N.º 495, el mismo que queda redactado de la siguiente manera: “Se entiende por Urbanizaciones Populares, aquellas de las que son titulares las Cooperativas de Vivienda, Asociaciones Pro Vivienda, Asociaciones de Vivienda, Juntas de Propietarios, Juntas de Compradores y cualquier otra forma asociativa con fines de vivienda.”

### Artículo 32.-

Las prendas agrícolas que constituyan los propietarios o poseedores de predios rurales inscritos en el Registro Predial de Lima, se registrarán exclusivamente en las partidas registrales de dichos predios. El Reglamento establecerá los requisitos y procedimientos para la inscripción y puestas en funcionamiento de lo dispuesto en este artículo.

### Artículo 33.-

Modifícase el Artículo 17.º de la Ley N.º 26366 el mismo que quedará redactado de la siguiente manera: "El Directorio es el órgano de la Superintendencia encargado de aprobar las políticas de su administración. Está integrado por el Superintendente Nacional de los Registros Públicos, quien lo preside, por un representante de la Presidencia del Consejo de Ministros, un representante del Ministerio de Economía y Finanzas y por un representante del Ministerio que preside COFOPRI, quien solo tendrá derecho a voz.

### Artículo 34.-

A efectos de la implementación del Programa de Formalización de la Propiedad a que se refiere el presente ley, exonerase a COFOPRI y al Registro Predial Urbano de la aplicación de las normas sobre proceso presupuestario, austeridad, remuneraciones y mecanismos de contratación o contrata, establecidos en la Ley Marco del Presupuesto del Sector Público y en la Ley Anual de Presupuesto vigente y sus modificatorias.

Considérese a COFOPRI y al Registro Predial Urbano como entidades en proceso de implementación por un período de tres años, contados desde la vigencia de la presente ley. Sus presupuestos y procesos presupuestarios, normas de austeridad y remuneraciones son determinados mediante directiva de cada una de estas entidades, tomando en cuenta criterios similares a los establecidos por la Oficina de Instituciones y Organismos del Estado del Ministerio de Economía y Finanzas.

La contratación de los bienes y servicios requeridos por COFORPI y el Registro Predial Urbano para el desarrollo del Programa de Formalización de la Propiedad se realizará a través de concursos o adjudicación directa, mediante procedimientos, excepciones y montos cuyas características se establecerán en los reglamentos que aprueben dichas entidades mediante directivas. Los reglamentos deberán prever procedimientos que garanticen que la

elección de los proveedores, contratistas y consultores sea el resultado de un proceso de selección entre varios candidatos o que las condiciones de calidad del servicio y de costo ofrecidas estén entre las más competitivas del mercado o que la experiencia en el desarrollo de las actividades relacionadas con el Programa de Formalización en el país ofrezca ventajas significativas para la realización de las actividades contratadas.

El FOPROP será administrado directamente por COFORPI, según los procedimientos y pautas que establezca mediante directiva y en concordancia con las disposiciones de las fuentes proveedoras de sus recursos, quedando exonerado de las normas de la Ley Anual de Presupuesto vigente y sus modificatorias.

El Registro Predial Urbano administrará directamente sus recursos propios, los que le sean asignados y los provenientes de donaciones, legados, créditos internos y externos de fuentes bilaterales o multilaterales o de la cooperación técnica internacional, que se obtengan para el cumplimiento de los fines de esta ley.

Asimismo, autorizase al Gerente General de COFOPRI y a la máxima autoridad del Registro Predial Urbano para que gestionen los recursos necesarios ante las autoridades pertinentes.

#### Artículo 35.-

Exonerase del Impuesto de Alcabala a la primera transferencia de dominio realizada por el Estado en favor de urbanizaciones populares, en los procesos de regularización de su propiedad seguidos durante la ejecución del Programa de Formalización de la Propiedad.

#### Artículo 36.-

Las transferencias, información, documentación y cualquier otra acción dispuesta por COFOPRI o el Registro Predial Urbano para la ejecución del Programa de Formalización de la Propiedad estarán exoneradas del pago de cualquier tasa, arancel, derecho registral o municipal u otro cobro por los servicios requeridos.

#### Artículo 37.-

La presente ley será reglamentada mediante Decretos Supremos, con excepción de aquellos reglamentos que deban ser aprobados mediante directivas de COFOPRI o del Registro Predial Urbano, conforme a lo dispuesto en esta ley.

#### Artículo 38.-

Deroganse el penúltimo párrafo del Artículo 2., el inciso b) del Artículo 14., el segundo párrafo del Artículo 15., el segundo párrafo del Artículo 19. y la primera, la séptima y la novena disposición complementaria de la Ley N. 26366. Asimismo, deróguese, modifíquese o déjese sin efecto las demás normas que se opongan a la presente ley.

#### Artículo 39.-

La presente ley entrará en vigencia al día siguiente de su publicación en el Diario Oficial El Peruano.



## National Housing Rights Legislation



### South Africa

#### Land Reform (Labour Tenants) Bill B94-95

##### Article 2. Deprivation of informal rights to land

- (1) Subject to the provisions of subsection (2), and the provisions of the Expropriation Act, 1975 (Act No. 63 of 1975), no person may be deprived of any informal right to land without his or her consent.
- (2) Where land is used on a communal basis, an informal right to such land may be disposed of in accordance with the custom and usage of that community: Provided that such custom and usage shall be deemed to include the principle that a decision to dispose of any such right may only be taken by a majority of the holders of such rights present or represented at a meeting convened for the purpose of considering such disposal and of which they have been given sufficient notice, and in which they have had a reasonable opportunity to participate.



## National Housing Rights Legislation



### Uruguay

Act No. 14384 (1978)

[Act No. 14384 of 1978 provides that all rural producers are entitled to a minimum investment in their land they occupy and, to working conditions which allow them to develop their holdings economically, whilst making a reasonable profit.] [\(52\)](#)



## National Housing Rights Legislation



### **Dominican Republic**

Decree 155-94 (1994)

The Dominican State has the obligation to provide the broadest possible protection possible for the stability of the Dominican family.

The 'sindico' of the National District is to carry out a census of all homes built in the North Zone on state land since October 1957, who were moved there originally, due to decree 3210-57 of 10 October 1957.

It is of social interest that the Dominican State ... give property title to all families who, up to the date of this decree, have built homes on the [mentioned lands] that were declared public property and of social utility via decree 3210-57.



## National Housing Rights Legislation



### Sudan The Civil Code (1984)

[Article 560(1) stipulates that anyone who reclaims derelict land by building thereon is more entitled to it than others.

Article 560(2) stipulates that anyone who reclaims derelict land for essential construction purposes is the most entitled to benefit therefrom. However, at locations where development is planned and regulated, construction is not permitted in certain zones designated by the competent authority, and irregular development activities are prohibited, without the consent of the authority. Such zones must be demarcated in a clear and unequivocal manner and must pay due regard to the right of citizens to essential housing, as well as the State's obligation to promote orderly construction in accordance with a carefully studied plan.

Article 560(3) stipulates that a registered usufruct is like registered title to property and cannot be expropriated except in the public interest and in return for fair compensation depending on the type of usufruct and the real extent of its exploitation.

Article 560(4) stipulates that a usufruct which is deemed to be legitimate in accordance with the provisions of the Code, even if unregistered, is protected by law, within the limits of the actual use, and cannot be expropriated except in the public interest and in return for fair compensation.

Article 560(6) stipulates that, for purposes of the regulation and exploitation of land use, the central or regional authorities or the authorities at the national capital, as appropriate, shall take measures to demarcate, survey, level and register land, which they shall be empowered to divide into plots of equal or differing areas for uses that be regulated in a manner conducive to the assurance of a decent life for the population of each district and also for the holders of legitimate usufructs.

Article 561(b) grants usufructs in respect to agricultural land in order to encourage low-income families to settle and exploit the land for the benefit of the family or in the public interest.

Article 563 grants usufructs in respect of land and residential property on the following conditions:

- (a) The family must benefit whenever possible and feasible;
- (b) A usufruct granted in respect of residential land should not be less than 200m<sup>2</sup> in urban areas or 400m<sup>2</sup> in villages and rural areas.
- (c) Housing should preferably be situated in salubrious areas characterized by their clean air and natural environment befitting human life.] [\[10\]](#)



## National Housing Rights Legislation



### Cameroon

Order No. 79/PM (1981)

[Lays down procedures for allocating plots on estates for those within low incomes. Under this Order, persons fulfilling the following conditions may apply for a serviced plot within such an estate: They must not possess any immovable property in the town where the estate is located at the time of acquisition of the plot; They must undertake to occupy the dwelling thus constructed themselves; They must have a monthly income which does not exceed the ceiling laid down in the applicable regulations and which entitles them to a housing loan.] <sup>(54)</sup>





## National Housing Rights Legislation



### Protection Against Forced Evictions

The practice of forced eviction involves the involuntary removal of persons from their homes or land, directly or indirectly attributable to the State. Under international law, forced evictions are considered a prima facie violation of the right to adequate housing and a gross violation of human rights.

Existing national legislation dealing with several aspects of forced evictions, including, *inter alia*, the prohibition of forced evictions, the due process necessarily to insure that an eviction is not arbitrary, and the requirement that relocation and resettlement be offered to evictees.



## National Housing Rights Legislation



### Philippines

#### The Urban Development and Housing Act of 1992 (Republic Act No. 7279)

##### Section 2. Declaration of State Policy and Program Objectives:

It shall be the policy of the State to undertake, in cooperation with the private sector, a comprehensive and continuing Urban Development and Housing Program, hereinafter referred to as the Program, which shall:

- (a) Uplift the conditions of the underprivileged and homeless citizens, in urban areas and in resettlements areas by making available to them decent housing at affordable cost, basic services, and employment opportunities;
- (b) Provide for the rational use and development of urban land in order to bring about the following:
  - (1) Equitable utilization of residential lands in urban and urbanizable areas with particular attention to the needs and requirement of the underprivileged and homeless citizens and not merely on the basis market forces;
  - (2) Optimization of the use and productivity of land and urban resources;
  - (3) Development of urban areas conducive to commercial and industrial activities which can generate more economic opportunities for the people;
  - (4) Reduction in urban dysfunctions, particularly those that adversely affect public health, safety and ecology; and
  - (5) Access to land and housing by the underprivileged and homeless citizens;
- (c) Adopt workable policies to regulate and direct urban growth and expansion towards a dispersed urban net and more balanced urban-rural interdependence;
- (d) Provide for an equitable land tenure system that shall guarantee security of tenure to program beneficiaries but shall respect the rights of small property owners and ensure the payment of just compensation;
- (e) Encourage more effective peoples' participation in the urban development process; and
- (f) Improve the capability of local government units in undertaking urban development and housing programs and projects.

##### Section 3. Definition of Terms: For the purposes of this Act:

- (l) "On-site development" refers to the process of upgrading and rehabilitation of blighted and slum urban areas with a view to minimizing displacement of dwellers in said areas, and with provisions for basic services as provided for in Section 21 hereof;  
...
- (n) "Resettlement areas" refers to areas identified by the appropriate national agency or by the local government unit with respect to areas within its jurisdiction, which shall be used for the relocation of the underprivileged and homeless citizens;
- (o) "Security of tenure" refers the degree of protection afforded to qualified Program beneficiaries against infringement or unjust, unreasonable and arbitrary eviction or disposition by virtue of the right of ownership, lease agreement, usufruct and other contractual arrangements.  
...
- (t) "Underprivileged and homeless citizens" refers to the beneficiaries of this Act and to individuals or families residing in urban and urbanizable areas whose income or combined household income falls within the poverty threshold as defined by the National Economic and Development Authority and who do not own housing facilities. This shall include those who live in makeshift dwelling units and do not enjoy security of tenure.  
...

## Chapter II

### Section 7. Inventory of Lands

Within one (1) year from the effectivity of this Act, all city and municipal governments shall conduct an inventory of all lands and improvements thereon within their respective localities.

#### Section 9. Priorities in the Acquisition of Land

Lands for socialized housing shall be acquired in the following order:

- (a) Those owned by the Government or any of its subdivisions, instrumentalities, or agencies, including government-owned or -controlled corporations and their subsidiaries;
- (b) Alienable lands of the public domain;
- (c) Unregistered or abandoned and idle lands;
- (d) Those within the declared Areas for Priority Development, Zonal Improvement Program sites, and Slum Improvement and Resettlement Program sites which have not yet been acquired;
- (e) Bagong Lipunan Improvement of Sites and Services or BLISS sites which have not yet been acquired; and
- (f) Privately-owned lands.

Where on-site development is found more practicable and advantageous to the beneficiaries, the priorities mentioned in this section shall not apply. The local government units shall give budgetary priority to on-site development of government lands.

#### Section 10. Modes of Land Acquisition

The modes of acquiring lands for purposes of this Act shall include, among others, community mortgage, land swapping, land assembly or consolidation, land banking, donation to the Government, joint-venture agreement, negotiated purchase, and expropriation; Provided however, That expropriation shall be resorted to only when other modes of acquisition have been exhausted. Provided further, That where expropriation is resorted to, parcels of land owned by small property owners shall be exempted for purposes of this Act; Provided finally, That abandoned property, as herein defined, shall be reverted and escheated to the State in a proceeding analogous to the procedure laid down in Rule 91 of the Rules of Court.

For the purpose of socialized housing, government-owned and foreclosed properties shall be acquired by the local government units, or by the National Housing Authority primarily through negotiated purchase; Provided, That qualified beneficiaries who are actual occupants of the land shall be given the right of first refusal.

#### Section 11. Expropriation of Idle Lands

All idle lands in urban and urbanizable areas, as defined and identified in accordance with this Act, shall be expropriated and shall form part of the public domain. These lands shall be disposed of or utilized by the Government for such purposes that conform with their land use plans. Expropriation proceedings shall be instigated if, after the lapse of one (1) year following receipt of notice of acquisition, the owner fails to introduce improvements as defined in Section 3 (f) hereof, except in the case of force majeure and other fortuitous events. Exempted from this provision, however, are residential lands owned by small property owners or those the ownership of which is the subject of a pending litigation.

#### Section 14. Limitations on the Disposition of Lands for Socialized Housing

No land for socialized housing, including improvements or rights thereon, shall be sold, alienated, conveyed, encumbered or leased by any beneficiary of this Program except to qualified program beneficiaries as determined by the government agency concerned. ...

#### Section 15. Policy

Socialized housing, as defined in Sec. 3 hereof, shall be the primary strategy in providing shelter for the underprivileged and homeless. However, if the tenurial arrangement in a particular socialized housing program is in the nature of leasehold or usufruct, the same shall be transitory and the beneficiaries must be encouraged to become independent from the Program within a given period of time, to be determined by the implementing agency concerned.

#### Section 18. Balanced Housing Developments

The Program shall include a system to be specified in the Framework plan whereby developers of proposed subdivision projects shall be required to develop an area for socialized housing equivalent to at least twenty percent (20%) of the total subdivision area or total subdivision cost, at the option of the developer, within the same city or municipality, whenever feasible, and in accordance with the standards set by the Housing and Land Use Regulatory Board and other existing laws. ...

## Section 22. Livelihood Component

To the extent feasible, socialized housing and resettlement projects shall be located near areas where employment opportunities are accessible. The government agencies dealing with the development of livelihood programs and grant of livelihood loans shall give priority to the beneficiaries of the program.

## Section 26. Urban Renewal and Resettlement

This shall include the rehabilitation and development of blighted and slum areas and the resettlement of program beneficiaries in accordance with the provision of this Act. On-site development shall be implemented whenever possible in order to ensure minimum movement of occupants of blighted lands and slum areas. The resettlement of the beneficiaries of the program from their existing places of occupancy shall be undertaken only when on-site development is not feasible and after compliance with the procedure laid down in Section 28 of this Act.

## Section 29. Resettlement

Within two (2) years from the effectivity of this Act, the local government units, in coordination with the National Housing Authority, shall implement the relocation and resettlement of persons living in danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and in other public places such as sidewalks, roads, parks, and playgrounds. The local government units, in coordination with the National Housing Authority, shall provide relocation or resettlement sites with basic services and facilities and access to employment and livelihood opportunities sufficient to meet the basic needs of affected families.

## Section 28. Eviction and Demolition

Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:

- (a) When persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, river banks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds;
- (b) When government infrastructure projects with available funding are about to be implemented; or
- (c) When there is a court order for eviction and demolition.

In the execution of eviction or demolition order involving underprivileged and homeless citizens, the following shall be mandatory:

- 1) Notice upon the affected persons or entities at least thirty (30) days prior to the date of eviction or demolition;
- 2) Adequate consultations on the matter of resettlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated;
- 3) Presence of local government officials or their representatives during eviction or demolition;
- 4) Proper identification of all persons taking part in the demolition;
- 5) Execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;
- 6) No use of heavy equipment for demolition except for structures that are permanent and of concrete materials;
- 7) Proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures; and
- 8) Adequate relocation, whether temporary or permanent.

## Section 44. Moratorium on Eviction and Demolition

There shall be a moratorium on the eviction of all Program beneficiaries and on the demolition of their houses or dwelling units for a period of three (3) years from the affectivity of this Act: Provided, That the moratorium shall not apply to those persons who have constructed their structures after the affectivity of this Act and for cases enumerated in Section 28 hereof.



## National Housing Rights Legislation



### United Kingdom

#### Protection From Eviction Act (1977, as amended by section 29 of the Housing Act 1988)

##### Section 1.

- (1) In this section “residential occupier”, in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.
- (2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believe, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.
- (3) If any person with intent to cause the residential occupier of any premises —
  - (a) to give up the occupation of the premises or any part thereof, or
  - (b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;
  - (c) does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence he shall be guilty of an offence.
- (3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—
  - (a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or
  - (b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence, and (in either case) he knows, or has reasonable cause to believe, that the conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole part of the premises.
- (3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.
- (3C) In subsection (3A) above, “landlord”, in relation to a residential occupier of any premises, means the person who, but for —
  - (a) the residential occupier’s right to remain in occupation of the premises, or
  - (b) a restriction on the person’s right to recover possession of the premises, would be entitled to occupation of the premises and any superior landlord under whom that person derives title.
- (4) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding six months or to both;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.



## National Housing Rights Legislation



### India

#### The Slum Areas (Improvement and Clearance) Act (1956)

##### Section 3. Declaration of Slum Areas

1. Where the competent authority upon report from any of its officers or other information in its possession is satisfied as respects any area that the buildings in that area —
  - (a) are in any respect unfit for human habitation; or
  - (b) are by reason of dilapidation, overcrowding, faulty arrangement and design of such buildings, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health or morals.

It may by notification in the Official Gazette, declare such area to be a slum area.

2. In determining whether a building is unfit for human habitation for the purposes of this Act, regard shall be had to its condition in respect of the following matters, that is to say —
  - (a) repair;
  - (b) stability;
  - (c) freedom from damp;
  - (d) natural light and air;
  - (e) water supply;
  - (f) drainage and sanitary conveniences;
  - (g) facilities for storage, preparation and cooking of food and for the disposal of waste water, and the building shall be deemed to be unfit as aforesaid if and only if it is so far defective in one or more of the said matters that it is not reasonably suitable for occupation in that condition.

##### Section 5. Enforcement of notice requiring execution of works of improvement

1. If a notice under section 4 requiring the owner of the building (or of the land on which the building stands, as the case may be) to execute works of improvement is not complied with, then, after the expiration of the time specified in the notice the competent authority may itself do the works required to be done by the notice.
2. All expenses incurred by the competent authority under this section together with interest at such rate as the Central Government may by order fix, from the date when a demand for the expenses is made until payment, may be recovered by the competent authority from the owner of the building (or of the land on which the building stands, as the case may be) as arrears of land revenues:

Provided that if the owner proves that he —

- a. is receiving the rent merely as agent or trustee for some other person; and
- b. has not in his hands on behalf of that other person sufficient money to satisfy by the whole demand of the authority.

His liability shall be limited to the total amount of the money which he has in his hands as aforesaid.

##### Section 19. Proceedings for eviction not to be taken without permission of competent authority

1. Notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the competent authority —
  - a. institute, after the commencement of the Slum Area (Improvement and Clearance) Amendment Act, 1964 (43 of 1964) any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in a slum area; or
  - b. where any decree or order is obtained in any suit or proceeding institute before such commencement for the eviction of a tenant from any building or land in such area, execute such decree or order.
2. Every person desiring to obtain the permission referred to in subsection (1) shall make an application in writing to the competent authority in such form and containing such particulars as may be prescribed.

3. On receipt of such application, the competent authority, after giving an opportunity to the parties of being heard and after making such summary inquiry into the circumstances of the case as it thinks fit, shall by order in writing, either grant or refuse to grant such permission.
4. In granting or refusing to grant the permission under sub-section (3), the competent authority shall take into account the following factors, namely:
  - a. whether alternative accommodation within the means of the tenant would be available to him if he were evicted;
  - b. whether the eviction is in the interest of improvement and clearance of the slum areas;
  - c. such other factors, if any, as may be prescribed.
5. Where the competent authority refuses to grant the permission, it shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the applicant.



## National Housing Rights Legislation



### Philippines

#### Implementing Rules and Regulations to Ensure the Observance of Proper and Humane Relocation and Resettlement Procedures Mandated by the Urban Development and Housing Act 7279 of 1992

##### Section 4. Eviction and Demolition Pursuant to a Court Order

In cases of eviction and demolition pursuant to a court order involving underprivileged and homeless citizens, relocation shall be undertaken by the local government unit concerned and the National Housing Authority with the assistance of other government agencies within forty-five (45) days from the service of notice of final judgment by the court, after which period the order shall be executed: Provided further, That should relocation not be possible within the said period, financial assistance in the amount equivalent to the prevailing minimum daily wage multiplied by sixty (60) days shall be extended to the affected families by the local government unit concerned.

##### Section 6. Penalty Clause

Any person who violates any provision of R.A. 7279 shall be imposed the penalty of not more than six (6) years of imprisonment or a fine of not less than five thousand pesos (P5,000.00) but not more than one hundred thousand pesos (P100,000) or both at the discretion of the court; Provided, That if the offender is a corporation, partnership, association, or juridical entity, the penalty shall be imposed on the officer or officers of said corporation, partnership, association or juridical entity who caused the violation.

##### Section 7. Venue for Grievance

Complaints of violation of these Implementing Rules and regulations against local government executives shall be filed and prepared in accordance with section 671 of the Local Government Code of 1991 (R.A. 7160), thru the Department of Interior and Local Government.

Complaints against subordinate officials falling with the administrative jurisdiction of the local chief executives shall be filed with the office of the local chief executive concerned who shall cause to institute administrative or judicial proceedings against any subordinate official or employee who may have committed an offense in violation hereof of the Act itself.

In all instances, the aggrieved party may file his complaints directly with a court of competent jurisdiction pursuant to Section 45 of R.A. 7279.





## National Housing Rights Legislation



### Sudan

#### Decree 941 (May 1990)

[Decree 941 is Sudan's official law for dealing with internally displaced persons. Decree 941 provides some elements of due process with respect to forced evictions, including adequate notice, as well as requiring the provision of alternative accommodations with adequate services.]



## National Housing Rights Legislation



### Philippines

#### The Urban Development and Housing Act of 1992 (Republic Act No. 7279)

##### Section 2. Declaration of State Policy and Program Objectives:

It shall be the policy of the State to undertake, in cooperation with the private sector, a comprehensive and continuing Urban Development and Housing Program, hereinafter referred to as the Program, which shall:

- (a) Uplift the conditions of the underprivileged and homeless citizens, in urban areas and in resettlements areas by making available to them decent housing at affordable cost, basic services, and employment opportunities;
- (b) Provide for the rational use and development of urban land in order to bring about the following:
  - (1) Equitable utilization of residential lands in urban and urbanizable areas with particular attention to the needs and requirement of the underprivileged and homeless citizens and not merely on the basis market forces;
  - (2) Optimization of the use and productivity of land and urban resources;
  - (3) Development of urban areas conducive to commercial and industrial activities which can generate more economic opportunities for the people;
  - (4) Reduction in urban dysfunctions, particularly those that adversely affect public health, safety and ecology; and
  - (5) Access to land and housing by the underprivileged and homeless citizens;
- (c) Adopt workable policies to regulate and direct urban growth and expansion towards a dispersed urban net and more balanced urban-rural interdependence;
- (d) Provide for an equitable land tenure system that shall guarantee security of tenure to program beneficiaries but shall respect the rights of small property owners and ensure the payment of just compensation;
- (e) Encourage more effective peoples' participation in the urban development process; and
- (f) Improve the capability of local government units in undertaking urban development and housing programs and projects.

##### Section 3. Definition of Terms: For the purposes of this Act:

- (l) "On-site development" refers to the process of upgrading and rehabilitation of blighted and slum urban areas with a view to minimizing displacement of dwellers in said areas, and with provisions for basic services as provided for in Section 21 hereof;  
...
- (n) "Resettlement areas" refers to areas identified by the appropriate national agency or by the local government unit with respect to areas within its jurisdiction, which shall be used for the relocation of the underprivileged and homeless citizens;
- (o) "Security of tenure" refers the degree of protection afforded to qualified Program beneficiaries against infringement or unjust, unreasonable and arbitrary eviction or disposition by virtue of the right of ownership, lease agreement, usufruct and other contractual arrangements.  
...
- (t) "Underprivileged and homeless citizens" refers to the beneficiaries of this Act and to individuals or families residing in urban and urbanizable areas whose income or combined household income falls within the poverty threshold as defined by the National Economic and Development Authority and who do not own housing facilities. This shall include those who live in makeshift dwelling units and do not enjoy security of tenure.  
...

## Chapter II

### Section 7. Inventory of Lands

Within one (1) year from the effectivity of this Act, all city and municipal governments shall conduct an inventory of all lands and improvements thereon within their respective localities.

#### Section 9. Priorities in the Acquisition of Land

Lands for socialized housing shall be acquired in the following order:

- (a) Those owned by the Government or any of its subdivisions, instrumentalities, or agencies, including government-owned or -controlled corporations and their subsidiaries;
- (b) Alienable lands of the public domain;
- (c) Unregistered or abandoned and idle lands;
- (d) Those within the declared Areas for Priority Development, Zonal Improvement Program sites, and Slum Improvement and Resettlement Program sites which have not yet been acquired;
- (e) Bagong Lipunan Improvement of Sites and Services or BLISS sites which have not yet been acquired; and
- (f) Privately-owned lands.

Where on-site development is found more practicable and advantageous to the beneficiaries, the priorities mentioned in this section shall not apply. The local government units shall give budgetary priority to on-site development of government lands.

#### Section 10. Modes of Land Acquisition

The modes of acquiring lands for purposes of this Act shall include, among others, community mortgage, land swapping, land assembly or consolidation, land banking, donation to the Government, joint-venture agreement, negotiated purchase, and expropriation; Provided however, That expropriation shall be resorted to only when other modes of acquisition have been exhausted. Provided further, That where expropriation is resorted to, parcels of land owned by small property owners shall be exempted for purposes of this Act; Provided finally, That abandoned property, as herein defined, shall be reverted and escheated to the State in a proceeding analogous to the procedure laid down in Rule 91 of the Rules of Court.

For the purpose of socialized housing, government-owned and foreclosed properties shall be acquired by the local government units, or by the National Housing Authority primarily through negotiated purchase; Provided, That qualified beneficiaries who are actual occupants of the land shall be given the right of first refusal.

#### Section 11. Expropriation of Idle Lands

All idle lands in urban and urbanizable areas, as defined and identified in accordance with this Act, shall be expropriated and shall form part of the public domain. These lands shall be disposed of or utilized by the Government for such purposes that conform with their land use plans. Expropriation proceedings shall be instigated if, after the lapse of one (1) year following receipt of notice of acquisition, the owner fails to introduce improvements as defined in Section 3 (f) hereof, except in the case of force majeure and other fortuitous events. Exempted from this provision, however, are residential lands owned by small property owners or those the ownership of which is the subject of a pending litigation.

#### Section 14. Limitations on the Disposition of Lands for Socialized Housing

No land for socialized housing, including improvements or rights thereon, shall be sold, alienated, conveyed, encumbered or leased by any beneficiary of this Program except to qualified program beneficiaries as determined by the government agency concerned. ...

#### Section 15. Policy

Socialized housing, as defined in Sec. 3 hereof, shall be the primary strategy in providing shelter for the underprivileged and homeless. However, if the tenorial arrangement in a particular socialized housing program is in the nature of leasehold or usufruct, the same shall be transitory and the beneficiaries must be encouraged to become independent from the Program within a given period of time, to be determined by the implementing agency concerned.

#### Section 18. Balanced Housing Developments

The Program shall include a system to be specified in the Framework plan whereby developers of proposed subdivision projects shall be required to develop an area for socialized housing equivalent to at least twenty percent (20%) of the total subdivision area or total subdivision cost, at the option of the developer, within the same city or municipality, whenever feasible, and in accordance with the standards set by the Housing and Land Use Regulatory Board and other existing laws. ...

## Section 22. Livelihood Component

To the extent feasible, socialized housing and resettlement projects shall be located near areas where employment opportunities are accessible. The government agencies dealing with the development of livelihood programs and grant of livelihood loans shall give priority to the beneficiaries of the program.

## Section 26. Urban Renewal and Resettlement

This shall include the rehabilitation and development of blighted and slum areas and the resettlement of program beneficiaries in accordance with the provision of this Act. On-site development shall be implemented whenever possible in order to ensure minimum movement of occupants of blighted lands and slum areas. The resettlement of the beneficiaries of the program from their existing places of occupancy shall be undertaken only when on-site development is not feasible and after compliance with the procedure laid down in Section 28 of this Act.

## Section 29. Resettlement

Within two (2) years from the effectivity of this Act, the local government units, in coordination with the National Housing Authority, shall implement the relocation and resettlement of persons living in danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and in other public places such as sidewalks, roads, parks, and playgrounds. The local government units, in coordination with the National Housing Authority, shall provide relocation or resettlement sites with basic services and facilities and access to employment and livelihood opportunities sufficient to meet the basic needs of affected families.

## Section 28. Eviction and Demolition

Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:

- (a) When persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, river banks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds;
- (b) When government infrastructure projects with available funding are about to be implemented; or
- (c) When there is a court order for eviction and demolition.

In the execution of eviction or demolition order involving underprivileged and homeless citizens, the following shall be mandatory:

- 1) Notice upon the affected persons or entities at least thirty (30) days prior to the date of eviction or demolition;
- 2) Adequate consultations on the matter of resettlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated;
- 3) Presence of local government officials or their representatives during eviction or demolition;
- 4) Proper identification of all persons taking part in the demolition;
- 5) Execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;
- 6) No use of heavy equipment for demolition except for structures that are permanent and of concrete materials;
- 7) Proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures; and
- 8) Adequate relocation, whether temporary or permanent.

## Section 44. Moratorium on Eviction and Demolition

There shall be a moratorium on the eviction of all Program beneficiaries and on the demolition of their houses or dwelling units for a period of three (3) years from the affectivity of this Act: Provided, That the moratorium shall not apply to those persons who have constructed their structures after the affectivity of this Act and for cases enumerated in Section 28 hereof.



## National Housing Rights Legislation



### Philippines

#### Implementing Rules and Regulations to Ensure the Observance of Proper and Humane Relocation and Resettlement Procedures Mandated by the Urban Development and Housing Act 7279 of 1992

##### Section 4. Eviction and Demolition Pursuant to a Court Order

In cases of eviction and demolition pursuant to a court order involving underprivileged and homeless citizens, relocation shall be undertaken by the local government unit concerned and the National Housing Authority with the assistance of other government agencies within forty-five (45) days from the service of notice of final judgment by the court, after which period the order shall be executed: Provided further, That should relocation not be possible within the said period, financial assistance in the amount equivalent to the prevailing minimum daily wage multiplied by sixty (60) days shall be extended to the affected families by the local government unit concerned.

##### Section 6. Penalty Clause

Any person who violates any provision of R.A. 7279 shall be imposed the penalty of not more than six (6) years of imprisonment or a fine of not less than five thousand pesos (P5,000.00) but not more than one hundred thousand pesos (P100,000) or both at the discretion of the court; Provided, That if the offender is a corporation, partnership, association, or juridical entity, the penalty shall be imposed on the officer or officers of said corporation, partnership, association or juridical entity who caused the violation.

##### Section 7. Venue for Grievance

Complaints of violation of these Implementing Rules and regulations against local government executives shall be filed and prepared in accordance with section 671 of the Local Government Code of 1991 (R.A. 7160), thru the Department of Interior and Local Government.

Complaints against subordinate officials falling with the administrative jurisdiction of the local chief executives shall be filed with the office of the local chief executive concerned who shall cause to institute administrative or judicial proceedings against any subordinate official or employee who may have committed an offense in violation hereof of the Act itself.

In all instances, the aggrieved party may file his complaints directly with a court of competent jurisdiction pursuant to Section 45 of R.A. 7279.



## National Housing Rights Legislation



### **Russian Federation** The Housing Code (1986)

#### Article 91.

Tenants may be evicted from housing if the building they live in is scheduled for demolition, is deemed uninhabitable, is in danger of collapsing, or is scheduled to be converted to non-residential use.

#### Article 92.

In cases of eviction under these circumstances, the state must provide tenants with alternative living accommodations within the social norms of twelve square meters per person.



## National Housing Rights Legislation



### Non-Discrimination

Under international law, States cannot allow discrimination against persons with respect to housing rights. For example, Article 5 (e) the International Convention on the Elimination of All Forms of Racial Discrimination requires States Parties to “prohibit and eliminate racial discrimination in all its forms and to guarantee the rights of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of economic, social and cultural rights in particular . . . the right to housing.”

Similarly, Article 14 of the International Convention on the Elimination of All Forms of Discrimination Against Women specifically requires States Parties to ensure that women in rural areas enjoy adequate living conditions, particularly in relation to housing. Furthermore, the UN Commission on Human Rights has, by consensus and on numerous occasions, affirmed that discrimination in law against women with respect to having access to, acquiring and securing land, property and housing, as well as financing for land, property and housing, constitutes a violation of women’s human right to protection against discrimination. <sup>(45)</sup> In addition, in resolution 42/1, the UN Commission on the Status of Women “urges States to design and revise laws to ensure that women are accorded full and equal rights to own land and other property, and the right to adequate housing, including through the right to inheritance, and to undertake administrative reforms and other necessary measures to give women the same right as men to credit, capital, appropriate technologies, access to markets and information.” <sup>(46)</sup>



## National Housing Rights Legislation



### Australia

#### Racial Discrimination Act (1975)

##### Section 12.

- (1) It is unlawful for a person, whether as a principal or agent:
  - (a) To refuse or fail to dispose of any estate or interest in land, or any residential or business accommodation, to a second person;
  - (b) To dispose of such an estate or interest or such accommodation to a second person on less favourable terms and conditions than those which are or would otherwise be offered;
  - (c) To treat a second person who is seeking to acquire or has acquired such an estate or interest or such accommodation less favourably than other persons in the same circumstances;
  - (d) To refuse to permit a second person to occupy any land or any residential or business accommodation; or
  - (e) To terminate any estate or interest in land of a second person or the right of a second person to occupy any land or any residential or business accommodation, by reason of the race, colour or national or ethnic origin of that second person or any relative or associate of that second person.
- (2) It is unlawful for a person, whether as a principal or agent, to impose or seek to impose on another person any term of condition that limits, by reference to race, colour or national or ethnic origin, the persons or class of persons who may be the licensees or invitees of the occupier of any land or residential or business accommodation.





## National Housing Rights Legislation



### United States of America Civil Rights Code (1866)

#### Section 1982. Property rights of citizens <sup>(42)</sup>

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.



## National Housing Rights Legislation



### Canada Canadian Human Rights Act

#### Sec. 5.

It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public

- (a) To deny, or to deny access to, any such goods, service, facility or accommodation to any individual, or
- (b) To differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

#### Sec. 6.

It is a discriminatory practice in the provision of commercial premises or residential accommodation:

- (a) To deny occupancy of such premises or accommodation to any individual, or
- (b) To differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

#### Sec 13.

(1) It is a discriminatory practice:

- (a) In the provision of goods, services, facilities or accommodation customarily available to the general public,
- (b) In the provision of commercial premises or residential accommodation, or
- (c) In matters related to employment,

To harass an individual on a prohibited ground of discrimination.

#### Sec 15.

- (1) It is not a discriminatory practice for a person to adopt or carry out a special program, plan or arrangement designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be or are based on or related to the race, national or ethnic origin, colour, religion, age, sex, marital status, or disability of members of that group, by improving opportunities respecting goods, services facilities, accommodation or employment in relation to that group.



## National Housing Rights Legislation



### Canada

Human Rights Code (1981)

Statutes of Ontario (1981, chap. 53), as amended in 1984, Chapter 58, s. 39 and 1986, Chapter 64, s. 18

#### Section 2.

- (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status, handicap or the receipt of public assistance.
- (2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, marital status, same-sex partnership status, family status, handicap or the receipt of public assistance.

#### Section 3a

- (1) Every sixteen or seventeen year old person who has withdrawn from parental control has a right to equal treatment with respect to occupancy of and contracting for accommodation without discrimination because the person is less than eighteen years old.

#### Section 6.

- (1) Every person who occupies accommodation has a right to freedom from harassment because of sex by the landlord or agent of the landlord or by an occupant of the same building.



## National Housing Rights Legislation



### **Dominica** Nationality and Racial Offences Act

#### Section 4.

- (1) Where the licence or consent of the landlord of or any other person is required for the disposal to any person of premises comprised in a tenancy that licence or consent shall be deemed to be unreasonably withheld if and so far as it is withheld on the ground of colour, race or ethnic or national origins.
- (2) Any covenant, agreement or stipulation which purports to prohibit the disposal of premises comprised in a tenancy to persons by reference to colour, race or ethnic or national origins shall be null and void.
- (3) In this section “tenancy” means a tenancy created by a lease or sub-lease, by an agreement for a lease or sub-lease or by a tenancy agreement or in pursuance to any enactment; and “disposal in relation to premises comprised in a tenancy includes assignment or assignation of the tenancy and subletting or parting with possession of the premises or any part of the premises.
- (4) This section applies to tenancies created before as well as after the passing of this Act; but does not apply to a tenancy of premises forming part of the dwelling house of which the remainder of part of the remainder is occupied by the person whose licence or consent is required, as his own residence.



## National Housing Rights Legislation



### New Zealand

#### The Residential Tenancies Act No. 120 (1986)

#### Part II Tenancy Agreements (Preliminary Matters)

##### Section 12. Discrimination on certain grounds prohibited -

- (1) Except with prior consent of the Tenancy Tribunal, a landlord shall not, in respect of the grant, continuance, extension, variation, termination, or renewal of a tenancy agreement, discrimination against any person on any of the following grounds:
  - (a) That the person has had a child, or is pregnant, or is not sterile;
  - (b) That it is intended that a child will reside in the premises or that a child will reside is or has been residing in the premises during the tenancy;
  - (c) That the person is unemployed or likely to become unemployed.
- (2) Except with the prior consent of the Tenancy Tribunal, a landlord shall not, in respect of the grant, continuance, extension, variation, termination, or renewal of a tenancy agreement:
  - (a) Instruct any person to discriminate against any other person on any of the grounds set out in subsection (1) of this section; or
  - (b) State an intention (whether by advertisement or otherwise) to discriminate against any person on any of those grounds.
- (3) Discrimination against any person in contravention of subsection (1) of this section, and the giving of an instruction or the stating of an intention in contravention of subsection (2) of this section, is each hereby declared to be an unlawful act.

#### Part II Tenancy Agreements (Preliminary Matters)

##### Section 45. Landlord's responsibilities -

- (1) The landlord shall:
  - (a) Provide the premises in a reasonable state of cleanliness; and
  - (b) Provide and maintain the premises in a reasonable state of repair having regard to the age and character of the premises and the period during which the premises are likely to remain habitable and available for residential purposes; and
  - (c) Comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises; and
  - (d) Compensate the tenant for any reasonable expenses incurred by the tenant in repairing the premises where -
    - (i) The state of disrepair has arisen otherwise than as a result of a breach of the tenancy agreement by the tenant and is likely to cause injury to persons or property or is otherwise serious and urgent; and
    - (ii) The tenant has made a reasonable attempt to give the landlord notice of the state of disrepair.
  - (e) Take all reasonable steps to ensure that none of the landlord's other tenants causes or permits any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises.
- (2) The landlord shall not interfere with the supply of gas, electricity, water, telephone services, or other services to the premises, except where the interference is necessary to avoid danger to any person or to enable maintenance or repairs to be carried out.
- (3) The provisions of subsection (1) of this section shall apply notwithstanding that the tenant has notice of the state of the premises at the time at which the tenancy agreement is entered into.
- (4) Nothing in subsection (1) of this section shall impose upon the landlord any obligation to repair any damage, or compensate the tenant for any want of repair, arising out of any breach, by the tenant of any obligation imposed on tenants by section 40 of this Act.

(5) In this section “premises” includes facilities.



## National Housing Rights Legislation



### New Zealand

#### The Human Rights Commission Act (1977)

##### Article 25(1): Land, Housing and Other Accommodation:

It shall be unlawful for any person, on his own behalf or on behalf or purported behalf of any principal:

- (a) To refuse or fail to dispose of any estate or interest in land or any residential or business accommodation to any other person; or
- (b) To dispose of such an estate or interest or such accommodation to any person on less favourable terms and conditions than are or would be offered to other persons; or
- (c) To treat any person who is seeking to acquire or has acquired such an estate or interest or such accommodation differently from other persons in the same circumstances; or
- (d) To deny any person, directly or indirectly, the right to occupy any land or any residential or business accommodation; or
- (e) To terminate any estate or interest in land or the right of any person to occupy any land or any residential or business accommodation - by reason of the sex, marital status or religious or ethical belief of that person.



## National Housing Rights Legislation



### United Kingdom

#### Housing Act of 2004 - Accommodation needs of gypsies and travelers (2004)

##### Sec. 225. Duties of local housing authorities: accommodation needs of gypsies and travellers

- (1) Every local housing authority must, when undertaking a review of housing needs in their district under section 8 of the Housing Act 1985 (c. 68), carry out an assessment of the accommodation needs of gypsies and travellers residing in or resorting to their district.
- (2) Subsection (3) applies where a local housing authority are required under section 87 of the Local Government Act 2003 (c. 26) to prepare a strategy in respect of the meeting of such accommodation needs.





## National Housing Rights Legislation



### United Kingdom Race Relations Act (1976)

#### Section 21.

- (1) It is unlawful for a person, in relation to premises in Great Britain of which he has power to dispose, to discriminate against another:
  - (a) In the terms on which he offers him those premises; or
  - (b) By refusing his application for those premises; or
  - (c) In his treatment of him in relation to any list of persons in need of premises of that description.
- (2) It is unlawful for a person, in relation to premises managed by him, to discriminate against a person occupying the premises:
  - (a) In a way he affords him access to any benefits or facilities, or by refusing or deliberately admitting to afford him access to them; or
  - (b) By evicting him, or subjecting him to any other detriment.



## National Housing Rights Legislation



### United States of America

Civil Rights Code (1968, as amended) <sup>(26)</sup>

[Under the Fair Housing Act, it is illegal to discriminate against a person in the provision of housing because that person has HIV/AIDS, has a record of having HIV/AIDS, is perceived as having HIV/AIDS, is associated with persons with HIV/AIDS, or has a person with HIV/AIDS residing with them.]

#### Section 1441a. National housing goals

##### (a) Congressional findings and reaffirmation of goals

The Congress finds that the supply of the Nation's housing is not increasing rapidly enough to meet the national housing goal, established in the Housing Act of 1949 [42 U.S.C.A. s 1441 et seq.], of the "realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family". The Congress reaffirms this national housing goal and determines that it can be substantially achieved within the next decade by the construction or rehabilitation of twenty-six million housing units, six million of these for low and moderate income families.

##### (b) Additional Congressional findings

The Congress further finds that policies designed to contribute to the achievement of the national housing goal have not directed sufficient attention and resources to the preservation of existing housing and neighborhoods, that the deterioration and abandonment of housing for the Nation's lower income families has accelerated over the last decade, and that this acceleration has contributed to neighborhood disintegration and has partially negated the progress toward achieving the national housing goal which has been made primarily through new housing construction.

##### (c) Congressional declaration of purposes

The Congress declares that if the national housing goal is to be achieved, a greater effort must be made to encourage the preservation of existing housing and neighborhoods through such measures as housing preservation, moderate rehabilitation, and improvements in housing management and maintenance, in conjunction with the provision of adequate municipal services. Such an effort should concentrate, to a greater extent than it has in the past, on housing and neighborhoods where deterioration is evident but has not yet become acute. <sup>(27)</sup>

#### Section 3604. Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful —

- (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.
- (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.
- (c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.
- (d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
- (e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.
- (f)
  - (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of —

- (A) that buyer or renter,
  - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
  - (C) any person associated with that buyer or renter.
- (2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of —
- (A) that person; or
  - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
  - (C) any person associated with that person.
- (3) For purposes of this subsection, discrimination includes —
- (A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.
  - (B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or
  - (C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that —
    - (i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;
    - (ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
    - (iii) all premises within such dwellings contain the following features of adaptive design:
      - (I) an accessible route into and through the dwelling;
      - (II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
      - (III) reinforcements in bathroom walls to allow later installation of grab bars; and
      - (IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.
- (4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as “ANSI A117.1”) suffices to satisfy the requirements of paragraph (3)(C)(iii).
- (5)
- (A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.
  - (B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.
  - (C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).
  - (D) Nothing in this subchapter shall be construed to require the Secretary to review or approve the

plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

(6)

(A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 3610(f)(3) of this title to receive and process complaints or otherwise engage in enforcement activities under this subchapter.

(B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this subchapter.

(7) As used in this subsection, the term “covered multifamily dwellings” means —

(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(B) ground floor units in other buildings consisting of 4 or more units.

(8) Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this subchapter shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subchapter.

(9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. [\(49\)](#)



## National Housing Rights Legislation



### Canada

Human Rights Code (1981)

Statutes of Ontario (1981, chap. 53), as amended in 1984, Chapter 58, s. 39 and 1986, Chapter 64, s. 18

#### Section 2.

- (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status, handicap or the receipt of public assistance.
- (2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, marital status, same-sex partnership status, family status, handicap or the receipt of public assistance.

#### Section 3a

- (1) Every sixteen or seventeen year old person who has withdrawn from parental control has a right to equal treatment with respect to occupancy of and contracting for accommodation without discrimination because the person is less than eighteen years old.

#### Section 6.

- (1) Every person who occupies accommodation has a right to freedom from harassment because of sex by the landlord or agent of the landlord or by an occupant of the same building.



## National Housing Rights Legislation



### Uganda Land Act of 1998

#### Sec. 32

- (1) Any decision taken in respect of land held under customary tenure, whether in respect of land held individually or communally shall be in accordance with the custom, traditions and practices of the community, except that a decision which denies women or children or persons with disability access to ownership, occupation or use of any land or imposes conditions which violate articles 33, 34 or 35 of the Constitution on any ownership, occupation or use of any land shall be null and void. [\(a\)](#)



## National Housing Rights Legislation



### United Kingdom Matrimonial Homes Act (1983)

#### Section 1.

- (1) Where one spouse is entitled to occupy a dwelling house by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him or her the right to remain in occupation, and the other spouse is not so entitled, then, subject to the provisions of this Act, the spouse not so entitled shall have the following rights (in this Act referred to as “rights of occupation”) -
  - (a) if in occupation, a right not to be evicted or excluded from the dwelling house or any part thereof by the other spouse except with the leave of the court given by an order under this section;
  - (b) if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling house.
- (2) So long as one spouse has rights of occupation, either of the spouses may apply to the Court for an order -
  - (a) declaring, enforcing, restricting or terminating those rights, or
  - (b) prohibiting, suspending or restricting the exercise by either spouse of the right to occupy the dwelling house, or
  - (c) requiring either spouse to permit the exercise by the other of that right.



## National Housing Rights Legislation



### Provision of Affordable Housing for the Poor

Affordability is another key component of adequate housing. Under international law, steps should be taken by States to ensure that the percentage of housing-related costs is generally commensurate with income levels. Furthermore, States should establish housing subsidies for those unable to obtain affordable housing. As for rental or lease-hold arrangements, tenants should be protected from unreasonable rent levels or rent increases by appropriate, including legislative, means.

Legislative means by which States attempt to ensure that housing is affordable include *inter alia*: subsidy programmes, the direct provision of housing by the State, rent price controls, the availability of affordable construction materials, incorporating affordable housing into general economic policies, and employer provided housing.





## National Housing Rights Legislation



### **Bermuda**

#### Parish Assistance Act (1968)

[Social assistance is available to any individual who does not have enough income to cover basic needs (which have been defined as food, shelter, clothing, fuel, utilities, household supplies and personal requirements; funerals and burials; and health care services.) [u2014](#)]



## National Housing Rights Legislation



### **Bolivia**

Supreme Decree No. 23261 (15 September 1992)

[“The State has created facilities to enable the maximum number of persons to accede to housing of their own, such as the National Subsidized Housing Fund (FONVIS) set up under Supreme Decree No. 23261 of 15 September 1992 with the primary aim of reducing the housing deficit.”] [uu](#)



## National Housing Rights Legislation



### Cameroon

Decree No. 77/140 (1977)

[Establishes the Cameroon Housing Loan Company: this organization provides financial support for any project designed to promote housing. For this purpose, it is authorized: (a) To finance the provision of services to land earmarked for the construction of low-income housing; (b) To seek and invest the funds required for property and development companies, as well as for the implementation of any low-income housing programme which falls under the objectives of the plan and meets certain specifications; (c) To accept the savings of natural or legal persons for the purpose of facilitating property ownership. To that end the Crédit Foncier may, by means of endorsements, guarantees or discounts, grant medium-term and long-term loans.] [\[1\]](#)



## National Housing Rights Legislation



### Canada

#### Canada Mortgage and Housing Corporation Act

##### Article 17.

Subject to section 33 of this Act and to subsection 75(2) and section 100 of the National Housing Act, the Corporation shall, on behalf of Her Majesty, and in the place of the Minister, have, exercise and perform all rights, powers, duties, liabilities and functions of the Minister under the Housing Acts or under any contract entered into under those Acts, except the authority of the Minister under those Acts to pay moneys out of the Consolidated Revenue Fund.

##### Article 18.

Wherever in any contract, agreement, guarantee or mortgage made or entered into under The Dominion Housing Act, 1935, The Home Improvement Loans Guarantee Act, 1937, The National Housing Act, 1938, or under The National Housing Act, 1944 prior to January 1, 1946, it is provided that any right, power, duty, liability or function is vested in or to be exercised or performed by the Minister of Finance or by any officer of the Department of Finance or by any person acting on behalf of the Minister of Finance, that right, power, duty, liability or functions shall be vested in and exercise or performed by the Corporation.



## National Housing Rights Legislation



### Canada Housing Development Act

#### Article 4.

The Minister may:

- (a) make grants in aid of studies into housing conditions or any matter relating to housing in Ontario; and
- (b) make grants and otherwise assist the housing building industry in Ontario by stimulating and encouraging research, education and constructive competition within the industry.

#### Article 7.

- (1) The Crown in right of Ontario represented by the Minister may make agreements with the Crown in right of Canada represented by the Minister of Government Services or such other Minister as may be authorized in that behalf respecting joint projects as contemplated in section 40 of the National Housing Act (Canada) for:
  - (a) the acquisition and development of land for housing purposes;
  - (b) the construction of housing projects for sale or for rent; and
  - (c) the acquisition, improvement and conversion for housing purposes of existing buildings situated in any municipality.
- (2) The Lieutenant Governor in Council may constitute corporations with such powers and duties as are considered expedient to carry out any of the terms of any agreement made under subsection (1), or to carry out any building development or housing project, including power to plan, construct and manage any building development or any housing project undertaken under such agreement or otherwise, and including power to acquire and dispose of land in their own name.
- (3) Any money required to be furnished by the Crown in right of Ontario under any agreement made under subsection (1) shall be paid out of the money appropriated therefor by the Legislature.
- (4) Any money required by the Crown in right of Ontario for the purposes of any corporation constituted under subsection (2) for purposes other than to carry out the terms of an agreement made under subsection (1) shall be paid out of the money appropriated therefor by the Legislature.
- (5) Despite any other Act, the council of a municipality that enters into or has heretofore entered into an agreement with Her Majesty the Queen in right of Ontario, or with Her Majesty the Queen in right of Ontario and Central Mortgage and Housing Corporation, a corporation established by The Central Mortgage and Housing Corporation Act (Canada) pursuant to The Housing Development Act, 1948 or this Act or predecessor of this Act shall be deemed to have and to have had authority to enter into such agreement and shall have all such powers as may be necessary to carry out the provisions thereof or of any undertaking given by such council pursuant thereto, and, without limiting the generality of the foregoing, such council may incur continuing obligations and make provisions for the discharge thereof and may contribute money to and expend money on joint housing projects and raise money therefor by the issue of debentures, all without the assent of the electors and without reference to the Ontario Municipal Board, and such council may apportion any debt or obligation arising out of such agreement in such manner as it considers equitable against any properties, whether such properties form part of a project within the meaning of such agreement or are adjacent thereto, and such debt or obligation when so apportioned shall be deemed to be a land tax within the meaning of the Municipal Act and recoverable as such.

#### Article 16.

In sections 17 and 18, “housing project” means a project designed to provide housing accommodation or to facilitate in any way the provision of housing accommodation, with or without any public space recreational facilities and commercial space or buildings appropriate thereto.

#### Article 17.

If there is an official plan in effect in a municipality that includes provisions relating to the provision of housing, which provisions have been approved by the Minister subsequent to the coming into force of this section, or if the council of a municipality has adopted a policy statement containing provisions relating to the provision of housing

which statement has been approved by the Minister, the council of the municipality may:

- (a) acquire and hold land, with or without buildings thereon, within the municipality for the purpose of a housing project;
- (b) survey, clear, grade, subdivide, service and otherwise prepare such land for the purpose of the project; and
- (c) sell, lease or otherwise dispose of such land for a nominal or other consideration for housing purposes.

**Article 19.**

To relieve any emergency in housing conditions, a municipality, with the approval of the Minister, may erect, maintain, manage and wind up projects for temporary housing accommodation either in or outside the municipality.



## National Housing Rights Legislation



**Canada**

Ontario Housing Corporation Act

### Article 6.

- (1) The Corporation, with the approval of the Lieutenant Governor in Council, may make any loan, grant, guarantee or advance that may be made by the Lieutenant Governor in Council or the Minister under sections 2 and 4 of the Housing Development Act.



## National Housing Rights Legislation



### Colombia

#### Decree 2154 (1993)

[Decree 2154 deals with the case of legal entitlement as one of the solutions to the problem of housing for which the family housing allowance can be granted. According to article 19, legal entitlement is the set of measures whereby a person able to benefit from such a solution may be granted ownership of the property in question and register it in the property register of the locality as appropriate, in accordance with the provision contained in chapter IV of Act 3a of 1991.] [\[13\]](#)





## National Housing Rights Legislation



### France

Law 90/449 of 31 May 1990 (visant à la mise en oeuvre du droit au logement ['Loi Besson'], France) [\(44\)](#)

#### Article 1.

The guarantee of a right to housing constitutes a duty of solidarity for the nation as a whole. Any person or family finding difficulties because of the inability of his resources to meet his needs has the right to collective assistance under conditions fixed by law that will ensure access to decent and independent housing where he can maintain himself.

#### Article 4.

The departmental plan, established for a definite duration, define the categories of persons who in enforcement of the first article, can be called to benefit from it;

This plan must grant priority to persons and families without any accommodation or those threatened with eviction who have nowhere to move, or those living in slums, precarious or insalubrious dwellings or improvised accommodation;

The plan analyses the needs and basic salary, per housing pool of inhabitants, the objectives to guarantee the attainment of housing by the centralisation of their requests for housing, the creation of a supplementary offer of houses and the establishment of financial aid and accompanying specific social measures

The departmental plan is made public by the President of the General Counsel and the Representatives of the State in the department in accordance with opinions of the Departmental Council of Integration.

#### Article 7.

The financing of the “funds of solidarity” for housing are guaranteed by the State and the Department.



## National Housing Rights Legislation



### France

#### Law for the Orientation of Cities and Towns (1991) <sup>(15)</sup>

[This law introduced qualitative changes in the global system of housing subventions and imposed financial solidarity between communes. Namely, one part of the state subsidies is directed from more prosperous to less developed communes which usually have greater needs for social housing. The law recommends that the State and the local communities coordinate such action for the development of local housing programmes. If such programmes are not elaborated, the prefect is authorized to modify urban planning documents in communes in which social housing accounts for less than 20 percent of the total housing stock to ensure that it becomes available. The law promotes the concept of diversification of housing with integration of social dwellings in the urban texture so as to avoid housing segregation of low-income groups.] <sup>(16)</sup>



## National Housing Rights Legislation



### Germany

#### The Federal Welfare Assistance Act (1994)

[Section 15(a). The local sponsor of welfare assistance may, exercising due discretion, also pay rent arrears in order to maintain the dwelling and prevent homelessness.] [\(12\)](#)

[Section 72. Persons (including the homeless) who have special social difficulties, which they cannot themselves overcome, prevent them from participating in community life may claim assistance in particular situations. This assistance includes all measures necessary to avert, eliminate or ease the difficulties. This means, in particular, advice and personal attention for the applicant, as well as measures to help procure and maintain as dwelling.] [\(13\)](#)



## National Housing Rights Legislation



**Iran**

First Economic, Social and Cultural Plan (1980)

### Article 1

- (11) In order to enable people to have access to low rental housing and to establish a basis for the construction of sufficient rental houses, the Government is bound to put legal facilities and necessary credits at the disposal of appropriate specialized and guild organizations, which are to be set up for this purpose within the framework of public companies and cooperatives.

### Article 6

- (4) [Provides for] establishing standards for the construction of urban and rural housing, appropriate production facilities and regional and development criteria; preparation of a legal system to increase the supply of residential units together with reduced area under construction; construction and supply of rented houses, extension of activities for the production of building materials.



## National Housing Rights Legislation



### Libyan Arab Jamahiriya

Resolution of the People's Congresses In Their Third Regular Session for 1980, Endorsed by the General People's Congress In Its Sixth Regular Session (1981)

#### Section 4.

Revision of the General Housing Policy and the creation of a Special Housing Bank. The Basic People's Congresses has decided the following:

- (a) Formulation of a Housing Policy whereby the direct role of society would be limited to providing free housing for those unable to earn a living and to construct public project housing units for those unable to participate in the new housing associations.
- (b) Establishment of a Real Estate Investment and Saving Bank to make loans available to citizens and to real estate business. The bank will be a fundamental instrument in providing housing to the citizen who must play a direct and active role in financing the construction of his house and carry out his obligations resulting from obtaining the loan and the ownership of the house.



## National Housing Rights Legislation



**Republic of Korea**

The Housing Construction Promotion Act (1972)

### Article 1.

The purpose of this act shall be to provide stability to the residential life of citizens who do not own their own homes, to provide for the construction and supply of dwelling units, and to raise housing funds to bring about the purpose of this Act.

### Article 2.

The State shall plan and put into actions measures necessary to ensure the stability and improvement of citizens' residential lives.



## National Housing Rights Legislation



### United Kingdom Social Security Act (1986)

#### Section 20.

(7) A person is entitled to housing benefit if-

- (a) he is liable to make payments in respect of a dwelling in Great Britain which he occupies as his home and also if, in respect of a particular day falling after 31st March 1989, but before 1st April 1990, the condition specified in subsection (7A) below is satisfied;
- (b) there is an appropriate maximum housing benefit in his case; and
- (c) either -
  - (i) he has no income or his income does not exceed the applicable amount; or
  - (ii) his income exceeds that amount, but only by so much that there is an amount remaining if the deduction for which section 21(5) below provides is made ...

#### Section 21.

- (5) Where a person is entitled to housing benefit ..., the amount shall be what remains after the deduction from the appropriate maximum housing benefit of prescribed percentages of the excess of his income over the applicable amount.



## National Housing Rights Legislation



### **United States of America** Banks and Banking Act (1967) <sup>(20)</sup>

#### Section 1701t.

The Congress affirms the national goal, as set forth in section 1441 of Title 42, of “a decent home and a suitable living environment for every American family”.

The Congress finds that this goal has not been fully realized for many of the Nation’s lower income families; that this is a matter of grave national concern; and that there exist in the public and private sectors of the economy the resources and capabilities necessary to the full realization of this goal.

The Congress declares that in the administration of those housing programs authorized by this Act which are designed to assist families with incomes so low that they could not otherwise decently house themselves, and of other Government programs designed to assist in the provision of housing for such families, the highest priority and emphasis should be given to meeting the housing needs of those families for which the national goal has not become a reality; and in the carrying out of such programs there should be the fullest practicable utilization of the resources and capabilities of private enterprise and of individual self-help techniques. <sup>(21)</sup>





## National Housing Rights Legislation



### **Belgium**

Law Onkelinx (1993)

[Enables the requisition of abandoned buildings and their transformation by the local authorities into dwellings for homeless people.] <sup>(22)</sup>



## National Housing Rights Legislation



**Bolivia**

Act No. 1493 (17 September 1993)

### Article 19(f).

[The Ministry of Human Development maintains responsibility in the] formulation, implementation and supervision of policies and programmes in: ... urban development, with promotion of the construction of subsidized housing and attention to the problems of urban and rural marginalization.



## National Housing Rights Legislation



### Canada Housing Development Act

#### Article 4.

The Minister may:

- (a) make grants in aid of studies into housing conditions or any matter relating to housing in Ontario; and
- (b) make grants and otherwise assist the housing building industry in Ontario by stimulating and encouraging research, education and constructive competition within the industry.

#### Article 7.

- (1) The Crown in right of Ontario represented by the Minister may make agreements with the Crown in right of Canada represented by the Minister of Government Services or such other Minister as may be authorized in that behalf respecting joint projects as contemplated in section 40 of the National Housing Act (Canada) for:
  - (a) the acquisition and development of land for housing purposes;
  - (b) the construction of housing projects for sale or for rent; and
  - (c) the acquisition, improvement and conversion for housing purposes of existing buildings situated in any municipality.
- (2) The Lieutenant Governor in Council may constitute corporations with such powers and duties as are considered expedient to carry out any of the terms of any agreement made under subsection (1), or to carry out any building development or housing project, including power to plan, construct and manage any building development or any housing project undertaken under such agreement or otherwise, and including power to acquire and dispose of land in their own name.
- (3) Any money required to be furnished by the Crown in right of Ontario under any agreement made under subsection (1) shall be paid out of the money appropriated therefor by the Legislature.
- (4) Any money required by the Crown in right of Ontario for the purposes of any corporation constituted under subsection (2) for purposes other than to carry out the terms of an agreement made under subsection (1) shall be paid out of the money appropriated therefor by the Legislature.
- (5) Despite any other Act, the council of a municipality that enters into or has heretofore entered into an agreement with Her Majesty the Queen in right of Ontario, or with Her Majesty the Queen in right of Ontario and Central Mortgage and Housing Corporation, a corporation established by The Central Mortgage and Housing Corporation Act (Canada) pursuant to The Housing Development Act, 1948 or this Act or predecessor of this Act shall be deemed to have and to have had authority to enter into such agreement and shall have all such powers as may be necessary to carry out the provisions thereof or of any undertaking given by such council pursuant thereto, and, without limiting the generality of the foregoing, such council may incur continuing obligations and make provisions for the discharge thereof and may contribute money to and expend money on joint housing projects and raise money therefor by the issue of debentures, all without the assent of the electors and without reference to the Ontario Municipal Board, and such council may apportion any debt or obligation arising out of such agreement in such manner as it considers equitable against any properties, whether such properties form part of a project within the meaning of such agreement or are adjacent thereto, and such debt or obligation when so apportioned shall be deemed to be a land tax within the meaning of the Municipal Act and recoverable as such.

#### Article 16.

In sections 17 and 18, “housing project” means a project designed to provide housing accommodation or to facilitate in any way the provision of housing accommodation, with or without any public space recreational facilities and commercial space or buildings appropriate thereto.

#### Article 17.

If there is an official plan in effect in a municipality that includes provisions relating to the provision of housing, which provisions have been approved by the Minister subsequent to the coming into force of this section, or if the council of a municipality has adopted a policy statement containing provisions relating to the provision of housing

which statement has been approved by the Minister, the council of the municipality may:

- (a) acquire and hold land, with or without buildings thereon, within the municipality for the purpose of a housing project;
- (b) survey, clear, grade, subdivide, service and otherwise prepare such land for the purpose of the project; and
- (c) sell, lease or otherwise dispose of such land for a nominal or other consideration for housing purposes.

**Article 19.**

To relieve any emergency in housing conditions, a municipality, with the approval of the Minister, may erect, maintain, manage and wind up projects for temporary housing accommodation either in or outside the municipality.



## National Housing Rights Legislation



### **Dominican Republic**

Decree 76-94 (1994)

Recognizing decrees 358-91 and 359-91 ... the environmental and ecological protection of the Izabel and Ozamo rivers ... and the urban and social improvement of the families who live along the rivers in these areas ... is of ...national interest.

[Recognizing] the importance of civil society participation, comprised of NGO's and community representatives. ... More than 12,500 houses will be constructed in Los Alcarizos, Guaricano, Sabana Perdida and Hainamosa, to house the families affected. ...

The urban and environmental reconstruction of the mentioned neighbourhoods [the North Zone] [shall be provided with] electrical energy, aqueducts, sewage systems and the cleansing of the mentioned rivers.



## National Housing Rights Legislation



### Germany

#### Federal Statute on Social Clauses for Areas with Scarce Supply of Dwellings (1993)

##### Article 14.

The State governments are hereby empowered, through legislative rules, to designate areas in which the sufficient provision of the population with rental housing of adequate conditions in a municipality or part of a municipality is particularly scarce. If it is established that a tenant has a right to occupy particular rental accommodation, then the following provisions of Civil Code apply.



## National Housing Rights Legislation



**Iran**

First Economic, Social and Cultural Plan (1980)

### Article 1

- (11) In order to enable people to have access to low rental housing and to establish a basis for the construction of sufficient rental houses, the Government is bound to put legal facilities and necessary credits at the disposal of appropriate specialized and guild organizations, which are to be set up for this purpose within the framework of public companies and cooperatives.

### Article 6

- (4) [Provides for] establishing standards for the construction of urban and rural housing, appropriate production facilities and regional and development criteria; preparation of a legal system to increase the supply of residential units together with reduced area under construction; construction and supply of rented houses, extension of activities for the production of building materials.



## National Housing Rights Legislation



### **Jamaica** Housing Act (1968)

#### Section 4.

- (1) The Ministry of Construction (Housing) under the Act is supposed to construct houses for persons in the low-income categories.





## National Housing Rights Legislation



**Republic of Korea**

The Rental Housing Construction Promotion Act (1984)

### Article 1.

The Act aims at defining actions necessary to assure housing for the people by providing for the construction and supply of rental housing.



## National Housing Rights Legislation



### Libyan Arab Jamahiriya

Resolution of the People's Congresses In Their Third Regular Session for 1980, Endorsed by the General People's Congress In Its Sixth Regular Session (1981)

#### Section 4.

Revision of the General Housing Policy and the creation of a Special Housing Bank. The Basic People's Congresses has decided the following:

- (a) Formulation of a Housing Policy whereby the direct role of society would be limited to providing free housing for those unable to earn a living and to construct public project housing units for those unable to participate in the new housing associations.
- (b) Establishment of a Real Estate Investment and Saving Bank to make loans available to citizens and to real estate business. The bank will be a fundamental instrument in providing housing to the citizen who must play a direct and active role in financing the construction of his house and carry out his obligations resulting from obtaining the loan and the ownership of the house.



## National Housing Rights Legislation



### **New Zealand** The Housing Act (1955)

[The Housing Act of 1955 allows for the purchase of land and dwellings, and the building of dwellings for State housing purposes.] <sup>(23)</sup>



## National Housing Rights Legislation



### United Kingdom Housing Act (1985, as amended)

#### Section 9. Provision of Housing Accommodation

- (1) A local housing authority may provide housing accommodation -
  - (a) by erecting houses, or converting buildings into houses, on land acquired by them for the purposes of this Part, or
  - (b) by acquiring houses.
- (2) The authority may alter, enlarge, repair or improve a house so erected, converted or acquired.
- (3) These powers may equally be exercised in relation to land acquired for the purposes
  - (a) of disposing of houses provided, or to be provided, on the land, or
  - (b) of disposing of the land to a person who intends to provide housing accommodation on it.
- (4) A local housing authority may not under this Part provide a cottage with a garden of more than one acre.
- (5) Nothing in this Act shall be taken to require (or to have any time required) a local housing authority itself to acquire or hold any houses or other land for the purposes of this Part. (amendment under section 161 of the Local Government and Housing Act (1989)).

#### Section 22.

A local housing authority shall secure that in the selection of their tenants a reasonable preference is given to -

- (a) persons occupying insanitary or overcrowded houses;
- (b) persons have large families;
- (c) persons living under unsatisfactory housing conditions;
- (d) persons towards whom the authority are subject to a duty under section 65 to 68 (persons found to be homeless).

#### Section 58. (A) Homeless

- (1) A person is homeless if he has no accommodation in England, Wales or Scotland.
- (2) A person shall be treated as having no accommodation if there is no accommodation which he, together with any other person who normally resides with him as a member of his family or in circumstances in which it is reasonable for that person to reside with him—
  - (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court, or
  - (b) has an express or implied license to occupy, or in Scotland has a right or permission or an implied right or permission to occupy, or
  - (c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.
- (2A) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to occupy.
- (2B) Regard may be had, in determining whether it would be reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the district of the local housing authority to whom he has applied for accommodation or for assistance in obtaining accommodation.
- (3) A person is also homeless if he has accommodation but —
  - (a) he cannot secure entry to it, or
  - (b) it is probable that occupation of it will lead to violence from some other person residing in it or to threats of violence from some other person residing in it and likely to carry out the threats, or
  - (c) it consists of a movable structure, vehicle or vessel designed or adapted for human habitation and

there is no place where he is entitled or permitted both to place it and to reside in it.

(4) A person is threatened with homelessness if it is likely that he will become homeless within 28 days.

#### Section 59.

(1) The following have a priority need for accommodation —

- (a) a pregnant woman or a person with whom a pregnant woman resides or might reasonably be expected to reside;
- (b) a person with whom dependent children reside or might reasonably be expected to reside;
- (c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;
- (d) a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster.

(2) The Secretary of State may by order made by statutory instrument —

- (a) specify further descriptions of person as having a priority need for accommodation, and
- (b) amend or repeal any part of subsection (1).

(3) Before making such an order the Secretary of State shall consult such associations representing relevant authorities, and such other persons, as he considers appropriate.

(4) No order shall be made unless a draft of it has been approved by resolution of each House of Parliament.

#### Section 60.

(1) A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.

(2) A person becomes threatened with homelessness intentionally if he deliberately does or fails to do anything the likely result of which is that he will be forced to leave accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.

(3) For the purposes of subsection (1) or (2) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate.

(4) Regard may be had, in determining whether it would have been reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the district of the local housing authority to whom he applied for accommodation or for assistance in obtaining accommodation.

#### Section 61.

(1) References in this Part to a person having a local connection with the district of a local housing authority are to his having a connection with that district —

- (a) because he is, or in the past was, normally resident in that district, and that residence is or was of his own choice, or
- (b) because he is employed in that district, or
- (c) because of family associations, or
- (d) because of social circumstances.

(2) For the purposes of this section —

- (a) a person is not employed in a district if he is serving in the regular armed forces of the Crown;
- (b) residence in a district is not of a person's own choice if he becomes resident in it because he, or a person who might reasonably be expected to reside with him, is serving in the regular armed forces of the Crown.

(3) Residence in a district is not of a person's own choice for the purpose of this section if he, or a person who might reasonably be expected to reside with him, became resident in it because he was detained under the authority of an Act of Parliament.

(4) The Secretary of State may by order specify other circumstances in which —

- (a) a person is not to be treated for the purposes of this section as employed in a district, or
  - (b) residence in a district is not to be treated for those purposes as of a person's own choice.
- (5) An order shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Section 62.

- (1) If a person (an "applicant") applies to a local housing authority for accommodation, or for assistance in obtaining accommodation, and the authority have reason to believe that he may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves as to whether he is homeless or threatened with homelessness.
- (2) If they are so satisfied, they shall make any further inquiries necessary to satisfy themselves as to —
  - (a) whether he has a priority need, and
  - (b) whether he became homeless or threatened with homelessness intentionally;
 And if they think fit they may also make inquiries as to whether he has a local connection with the district of another local housing authority in England, Wales or Scotland.

#### Section 63.

Interim duty to accommodate in case of apparent priority need

- (1) If the local housing authority have reason to believe that an applicant may be homeless and have a priority need, they shall secure that accommodation is made available for his occupation pending a decision as a result of their inquiries under section 62.
- (2) The duty arises irrespective of any local connection which the applicant may have the district of another local authority.

#### Section 64.

- (1) On completing their inquiries under section 62, the local housing authority shall notify the applicant of their decision on the question whether he is homeless or threatened with homelessness.
- (2) If they notify him that their decision is that he is homeless or threatened with homelessness, they shall at the same time notify him of their decision on the question whether he has a priority need.
- (3) If they notify him that their decision is that he has a priority need, they shall at the same time notify him —
  - (a) of their decision whether he became homeless or threatened with homelessness intentionally, and
  - (b) whether they have notified or propose to notify another local housing authority under section 67 (referral of application on grounds of local connection).
- (4) If the local housing authority notify the applicant —
  - (a) that they are not satisfied that he is homeless or threatened with homelessness, or
  - (b) that they are not satisfied that he has a priority need, or
  - (c) that they are satisfied that he became homeless or threatened with homelessness intentionally, or
  - (d) that they have notified or propose to notify another local housing authority under section 67 (referral of application on grounds of local connection),
 They shall at the same time notify him of their reasons.
- (5) The notice required to be given to a person under this section shall be given in writing and shall, if not received by him, be treated as having been given to him only if it is made available at the authority's office for a reasonable period for collection by him or on his behalf.

#### Section 65. Duties to persons found to be homeless.

- (1) This section has effect as regards the duties owed by the local housing authority to an applicant where they are satisfied that he is homeless.
- (2) Where they are satisfied that he has a priority need and are not satisfied that he became homeless intentionally, they shall, unless they notify another local housing authority in accordance with section 67 (referral of application on grounds of local connection), secure that accommodation becomes available for his occupation.

- (3) Where they are satisfied that he has a priority need but are also satisfied that he became homeless intentionally, they shall -
  - (a) secure that accommodation is made available for his occupation for such period as they consider will give him a reasonable opportunity of securing accommodation for his occupation, and
  - (b) furnish him with advice and such assistance as they consider appropriate in the circumstances in any attempts he may make to secure that accommodation becomes available for his occupation.

#### Section 66. Duties to persons found to be threatened with homelessness

- (1) This section has effect as regards the duties owed by the local housing authority to an applicant where they are satisfied that he is threatened with homelessness.
- (2) Where they are satisfied that he has a priority need and are not satisfied that he become threatened with homelessness intentionally, they shall take reasonable steps to secure that accommodation does not cease to be available for his occupation.

#### Section 67.

- (1) If the local housing authority —
  - (a) are satisfied that an applicant is homeless and has a priority need, and are not satisfied that he became homeless intentionally, but
  - (b) are of opinion that the conditions are satisfied for referral of his application to another local housing authority in England, Wales and Scotland,  
They may notify that other authority of the fact that his application has been made and that they are of that opinion.
- (2) The conditions for referral of an application to another local authority are —
  - (a) that neither the applicant nor any person who might reasonably be expected to reside with him has a local connection with the district of the authority to whom the application was made,
  - (b) that the applicant or a person who might reasonably be expected to reside with him has a local connection with the district of that other authority, and
  - (c) that neither the applicant nor any person who might reasonably be expected to reside with him will run the risk of domestic violence in that other district.
- (3) For this purpose a person runs the risk of domestic violence —
  - (a) if he runs the risk of violence from a person with whom, but for the risk of violence, he might reasonably be expected to reside, or from a person with whom he formerly resided, or
  - (b) if he runs the risk of threats of violence from such a person which are likely to be carried out.
- (4) The question whether the conditions for referral of an application are satisfied shall be determined by agreement between the notifying authority and the notified authority or, in default of agreement, in accordance with such arrangements as the Secretary of State may direct by order made by statutory instrument.
- (5) An order may direct that the arrangements shall be —
  - (a) those agreed by any relevant authorities or associations of relevant authorities, or
  - (b) in default of such agreement, such arrangements as appear to the Secretary of State to be suitable, after consultation with such associations representing relevant authorities, and such other persons, as he thinks appropriate.
- (6) No order shall be made unless a draft of the order has been approved by resolution of each House of Parliament.

#### Section 68.

- (1) Where, in accordance with section 67(1), a local housing authority notifies another authority of an application, the notifying authority shall secure that accommodation is available for occupation by the applicant until it is determined whether the conditions for referral of his application to the other authority are satisfied.
- (2) If it is determined that the conditions for referral are satisfied, the notified authority shall secure that accommodation becomes available for occupation by the applicant; if it is determined that the conditions

are not satisfied, the notifying authority shall secure that accommodation becomes available for occupation by him.

- (3) When the matter has been determined, the notifying authority shall notify the applicant —
  - (a) whether they or the notified authority are the authority whose duty it is to secure that accommodation becomes available for his occupation, and
  - (b) of the reasons why the authority subject to that duty are subject to it.
- (4) The notice required to be given to a person under subsection (3) shall be given in writing and shall, if not received by him, be treated as having been given to him only if it is made available at the authority's office for a reasonable period for collection by him or on his behalf.

#### Section 69.

- (1) A local housing authority may perform any duty under section 65 or 68 (duties to persons found to be homeless) to secure that accommodation becomes available for the occupation of a person —
  - (a) by making available suitable accommodation held by them under Part II (provision of housing) or any enactment, or
  - (b) by securing that he obtains suitable accommodation from some other person, or
  - (c) by giving him such advice and assistance as will secure that he obtains suitable accommodation from some other person,And in determining whether accommodation is suitable they shall have regard to Part IX (slum clearance), X (overcrowding) and XI (houses in multiple occupation) of this Act.





## National Housing Rights Legislation



### United States of America Civil Rights Code (1949, as amended) <sup>(24)</sup>

#### Section 1441. Congressional declaration of national housing policy

The Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family, thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth, and security of the Nation. The Congress further declares that such production is necessary to enable the housing industry to make its full contribution toward an economy of maximum employment, production, and purchasing power. The policy to be followed in attaining the national housing objective established shall be:

- (1) private enterprise shall be encouraged to serve as large a part of the total need as it can;
- (2) governmental assistance shall be utilized where feasible to enable private enterprise to serve more of the total need;
- (3) appropriate local public bodies shall be encouraged and assisted to undertake positive programs of encouraging and assisting the development of well-planned, integrated residential neighborhoods, the development and redevelopment of communities, and the production, at lower costs, of housing of sound standards of design, construction, livability, and size for adequate family life;
- (4) governmental assistance to eliminate substandard and other inadequate housing through the clearance of slums and blighted areas, to facilitate community development and redevelopment, and to provide adequate housing for urban and rural nonfarm families with incomes so low that they are not being decently housed in new or existing housing shall be extended to those localities which estimate their own needs and demonstrate that these needs are not being met through reliance solely upon private enterprise, and without such aid; and
- (5) governmental assistance for decent, safe, and sanitary farm dwellings and related facilities shall be extended where the farm owner demonstrates that he lacks sufficient resources to provide such housing on his own account and is unable to secure necessary credit for such housing from other sources on terms and conditions which he could reasonably be expected to fulfill.

The Department of Housing and Urban Development, and any other departments or agencies of the Federal Government having powers, functions, or duties with respect to housing, shall exercise their powers, functions, and duties under this or any other law, consistently with the national housing policy declared by this Act and in such manner as will facilitate sustained progress in attaining the national housing objective hereby established, and in such manner as will encourage and assist:

- (1) the production of housing of sound standards of design, construction, livability, and size for adequate family life;
- (2) the reduction of the costs of housing without sacrifice of such sound standards;
- (3) the use of new designs, materials, techniques, and methods in residential construction, the use of standardized dimensions and methods of assembly of home-building materials and equipment, and the increase of efficiency in residential construction and maintenance;
- (4) the development of well-planned, integrated, residential neighborhoods and the development and redevelopment of communities; and
- (5) the stabilization of the housing industry at a high annual volume of residential construction. <sup>(25)</sup>



## National Housing Rights Legislation



### United States of America Civil Rights Code (1968, as amended) <sup>(26)</sup>

[Under the Fair Housing Act, it is illegal to discriminate against a person in the provision of housing because that person has HIV/AIDS, has a record of having HIV/AIDS, is perceived as having HIV/AIDS, is associated with persons with HIV/AIDS, or has a person with HIV/AIDS residing with them.]

#### Section 1441a. National housing goals

##### (a) Congressional findings and reaffirmation of goals

The Congress finds that the supply of the Nation's housing is not increasing rapidly enough to meet the national housing goal, established in the Housing Act of 1949 [42 U.S.C.A. s 1441 et seq.], of the "realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family". The Congress reaffirms this national housing goal and determines that it can be substantially achieved within the next decade by the construction or rehabilitation of twenty-six million housing units, six million of these for low and moderate income families.

##### (b) Additional Congressional findings

The Congress further finds that policies designed to contribute to the achievement of the national housing goal have not directed sufficient attention and resources to the preservation of existing housing and neighborhoods, that the deterioration and abandonment of housing for the Nation's lower income families has accelerated over the last decade, and that this acceleration has contributed to neighborhood disintegration and has partially negated the progress toward achieving the national housing goal which has been made primarily through new housing construction.

##### (c) Congressional declaration of purposes

The Congress declares that if the national housing goal is to be achieved, a greater effort must be made to encourage the preservation of existing housing and neighborhoods through such measures as housing preservation, moderate rehabilitation, and improvements in housing management and maintenance, in conjunction with the provision of adequate municipal services. Such an effort should concentrate, to a greater extent than it has in the past, on housing and neighborhoods where deterioration is evident but has not yet become acute. <sup>(27)</sup>

#### Section 3604. Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful —

- (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.
- (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.
- (c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.
- (d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
- (e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.
- (f)
  - (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of —

- (A) that buyer or renter,
  - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
  - (C) any person associated with that buyer or renter.
- (2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of —
- (A) that person; or
  - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
  - (C) any person associated with that person.
- (3) For purposes of this subsection, discrimination includes —
- (A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.
  - (B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or
  - (C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that —
    - (i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;
    - (ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
    - (iii) all premises within such dwellings contain the following features of adaptive design:
      - (I) an accessible route into and through the dwelling;
      - (II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
      - (III) reinforcements in bathroom walls to allow later installation of grab bars; and
      - (IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.
- (4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as “ANSI A117.1”) suffices to satisfy the requirements of paragraph (3)(C)(iii).
- (5)
- (A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.
  - (B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.
  - (C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).
  - (D) Nothing in this subchapter shall be construed to require the Secretary to review or approve the

plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

(6)

(A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 3610(f)(3) of this title to receive and process complaints or otherwise engage in enforcement activities under this subchapter.

(B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this subchapter.

(7) As used in this subsection, the term “covered multifamily dwellings” means —

(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(B) ground floor units in other buildings consisting of 4 or more units.

(8) Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this subchapter shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subchapter.

(9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. [49](#)



## National Housing Rights Legislation



### United States of America Civil Rights Code (1974, as amended) <sup>(28)</sup>

#### Section 5301. Congressional findings and declaration of purpose

##### (c) Decent housing, suitable living environment, and economic opportunities for persons of low and moderate income; community development activities which may be supported by Federal assistance

The primary objective of this chapter and of the community development program of each grantee under this chapter is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective, not less than 70 percent of the aggregate of the Federal assistance provided to States and units of general local government under section 5306 of this title and, if applicable, the funds received as a result of a guarantee or a grant under section 5308 of this title, shall be used for the support of activities that benefit persons of low and moderate income, and the Federal assistance provided in this chapter is for the support of community development activities which are directed toward the following specific objectives —

- (1) the elimination of slums and blight and the prevention of blighting influences and the deterioration of property and neighborhood and community facilities of importance to the welfare of the community, principally persons of low and moderate income;
- (2) the elimination of conditions which are detrimental to health, safety, and public welfare, through code enforcement, demolition, interim rehabilitation assistance, and related activities;
- (3) the conservation and expansion of the Nation's housing stock in order to provide a decent home and a suitable living environment for all persons, but principally those of low and moderate income;
- (4) the expansion and improvement of the quantity and quality of community services, principally for persons of low and moderate income, which are essential for sound community development and for the development of viable urban communities;
- (5) a more rational utilization of land and other natural resources and the better arrangement of residential, commercial, industrial, recreational, and other needed activity centers;
- (6) the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods;
- (7) the restoration and preservation of properties of special value for historic, architectural, or aesthetic reasons;
- (8) the alleviation of physical and economic distress through the stimulation of private investment and community revitalization in areas with population outmigration or a stagnating or declining tax base; and
- (9) the conservation of the Nation's scarce energy resources, improvement of energy efficiency, and the provision of alternative and renewable energy sources of supply.

It is the intent of Congress that the Federal assistance made available under this chapter not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance. <sup>(29)</sup>



## National Housing Rights Legislation



### Denmark

#### The Danish Rent Act

[The Danish Rent Act provides tenants certain rights with respect to rent increases, terms of notice, etc. In this connection it should be added that a large proportion of the socially disadvantaged population live as tenants in privately rented dwellings.] [\(30\)](#)



## National Housing Rights Legislation



### France

Law Quillot (1982) <sup>(31)</sup>

["Affirms the right to housing and aimed at bridging the controversy between economic rentability of housing and its affordability for tenants."] <sup>(32)</sup>



## National Housing Rights Legislation



### **Lesotho** Constitution (1993)

#### Article 11. Right to respect for private and family life

(1) Every person shall be entitled to respect for his private and family life and his home.

#### Article 34. Economic opportunities

Lesotho shall adopt policies which encourage its citizens to acquire property including land, houses, tools and equipment; and shall take such other economic measures as the State shall consider affordable.





## National Housing Rights Legislation



### Philippines

#### Comprehensive & Integrated Shelter Finance Act (1994) (Republic Act 7835)

#### Section 2.

Declaration of Policy: It is hereby declared a policy of the State to undertake, in cooperation with the private sector, a continuing program of urban and land reform and housing which will make available, at affordable cost, decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlements areas.

In recognition of the role of housing as catalyst of economic growth and development, it is hereby declared a state policy to strengthen, promote and support the component activities of housing production and finance.

#### Section 3.

Statement of objectives: Towards this end, the State shall:

- (a) Ensure continuous funding support to vigorously implement the government's programs for urban and rural housing, resettlement, the development of sites and services, and the renewal of blighted areas;
- (b) Enhance the capability of low-income groups to acquire decent and low-cost housing units through the introduction of support mechanisms and facilities which shall render affordable such acquisitions;
- (c) Enjoin the active participation of the local government units in the socialized housing programs through adequate measures for housing development in their respective areas;
- (h) Focus the government's full financial, technical and manpower resources in addressing the shelter needs of the lowest thirty percent (30%) of the population and with the private sector's cooperation, the higher socio-economic percentiles of the our country's population.

#### Section 4.

National Shelter Program Implementation: Consistent with the aforementioned policy and objectives, the Housing and Urban Development Coordinating Council (HUDCC), through the respective agencies, shall intensify the implementation of vital components of the national Shelter Program requiring government budgetary assistance as follows.

- (a) Resettlement Program: This program shall improve land acquisition and site development by the national Housing Authority [NHA] to generate serviced homelots for families displaced from sites earmarked for government infrastructure projects, those occupying danger areas such as water ways, esteros, railroad tracks and those qualified for relocation and resettlement assistance under Republic Act No. 7279. To sustain this program, the NHA shall engage in land banking activities to ensure availability of land.
- (b) Medium-Rise Public and Private Housing: This shall entail the construction of medium-rise residential buildings by the government and/or private developers in all high-density urban areas of the country to maximize the utilization of scarce, high-cost urban land, except in areas where there are existing arrangements on housing and/or land utilization prior to the effectivity of this Act. Low-income families and other beneficiaries as defined under Republic Act No. 7279 shall gain access to the program either through direct sale with homebuyers' financing assistance or through lease arrangement depending on the affordability of the intended beneficiaries.
- (e) Local Housing: To ensure the equitable distribution of housing benefits across the country, the NHA is hereby tasked to implement cost-recoverable socialized housing projects in selected urban and urbanizable areas in all congressional districts. Criteria for the selection of sites shall be formulated by the HUDCC and NHA pursuant to Republic Act No. 7279.



## National Housing Rights Legislation



### Accessibility Generally

Accessibility is another essential component of the international legal definition of adequate housing. General Comment No. 4 requires adequate housing to be accessible to everyone entitled to housing, including disadvantaged groups and groups such as, but not limited to, the elderly, children the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas. Additionally, General Comment No. 4 provides that housing law and policy should take fully into account the special housing needs of such groups, including policies to increase access to land by landless or impoverished segments of society.



## National Housing Rights Legislation



### Denmark

Act on Housing Co-operatives (Act No. 441, 30 June 1993)

[For those groups who have difficulty in finding and retaining a home, the normal types of housing on offer are not adequate, and special schemes are needed for them. An example of a housing act which is aimed at solving the special needs of these groups is the Act on Housing Co-operatives....The Act is directly aimed at certain groups...these groups include the homeless, the mentally handicapped, the elderly, the disabled, people suffering from senile dementia, and refugees during the integration phase.] <sup>(33)</sup>



## National Housing Rights Legislation



### Germany

#### The Federal Welfare Assistance Act (1994)

[Section 15(a). The local sponsor of welfare assistance may, exercising due discretion, also pay rent arrears in order to maintain the dwelling and prevent homelessness.] [12](#)

[Section 72. Persons (including the homeless) who have special social difficulties, which they cannot themselves overcome, prevent them from participating in community life may claim assistance in particular situations. This assistance includes all measures necessary to avert, eliminate or ease the difficulties. This means, in particular, advice and personal attention for the applicant, as well as measures to help procure and maintain as dwelling.] [13](#)



## National Housing Rights Legislation



### Denmark

#### Act on Housing for the Elderly (1987)

[According to the 1987 Act on Housing for the Elderly the local authorities may provide the number of dwellings for the elderly and the disabled which they consider suitable for meeting local wishes and needs.] [351](#)



## National Housing Rights Legislation



**Colombia**

Act No. 7 of 1978 for the Protection of Children

### Article 7.

Every child has a right to medical care, to access to culture and sport, and to live in the home of a family. A sick child has the right to rehabilitation and to be among the first to receive assistance in the event of a disaster.



## National Housing Rights Legislation



### United States of America

Civil Rights Code (as amended 1990, "Americans with Disabilities Act") <sup>(36)</sup>

#### Section 12101. Findings and purpose

##### (a) Findings

The Congress finds that —

- (1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;
- (2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;
- (3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;
- (4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;
- (5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;
- (6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;
- (7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;
- (8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and
- (9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

##### (b) Purpose

It is the purpose of this chapter —

- (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
- (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;
- (3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and
- (4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities. <sup>(37)</sup>



## National Housing Rights Legislation



### United States of America

Civil Rights Code (as amended 1990, "Americans with Disabilities Act") <sup>(36)</sup>

#### Section 12101. Findings and purpose

##### (a) Findings

The Congress finds that —

- (1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;
- (2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;
- (3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;
- (4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;
- (5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;
- (6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;
- (7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;
- (8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and
- (9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

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## National Housing Rights Legislation



### United States of America

Civil Rights Code (1968, as amended) <sup>(26)</sup>

[Under the Fair Housing Act, it is illegal to discriminate against a person in the provision of housing because that person has HIV/AIDS, has a record of having HIV/AIDS, is perceived as having HIV/AIDS, is associated with persons with HIV/AIDS, or has a person with HIV/AIDS residing with them.]

#### Section 1441a. National housing goals

##### (a) Congressional findings and reaffirmation of goals

The Congress finds that the supply of the Nation's housing is not increasing rapidly enough to meet the national housing goal, established in the Housing Act of 1949 [42 U.S.C.A. s 1441 et seq.], of the "realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family". The Congress reaffirms this national housing goal and determines that it can be substantially achieved within the next decade by the construction or rehabilitation of twenty-six million housing units, six million of these for low and moderate income families.

##### (b) Additional Congressional findings

The Congress further finds that policies designed to contribute to the achievement of the national housing goal have not directed sufficient attention and resources to the preservation of existing housing and neighborhoods, that the deterioration and abandonment of housing for the Nation's lower income families has accelerated over the last decade, and that this acceleration has contributed to neighborhood disintegration and has partially negated the progress toward achieving the national housing goal which has been made primarily through new housing construction.

##### (c) Congressional declaration of purposes

The Congress declares that if the national housing goal is to be achieved, a greater effort must be made to encourage the preservation of existing housing and neighborhoods through such measures as housing preservation, moderate rehabilitation, and improvements in housing management and maintenance, in conjunction with the provision of adequate municipal services. Such an effort should concentrate, to a greater extent than it has in the past, on housing and neighborhoods where deterioration is evident but has not yet become acute. <sup>(27)</sup>

#### Section 3604. Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful —

- (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.
- (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.
- (c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.
- (d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
- (e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.
- (f)
  - (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of —

- (A) that buyer or renter,
  - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
  - (C) any person associated with that buyer or renter.
- (2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of —
- (A) that person; or
  - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
  - (C) any person associated with that person.
- (3) For purposes of this subsection, discrimination includes —
- (A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.
  - (B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or
  - (C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that —
    - (i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;
    - (ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
    - (iii) all premises within such dwellings contain the following features of adaptive design:
      - (I) an accessible route into and through the dwelling;
      - (II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
      - (III) reinforcements in bathroom walls to allow later installation of grab bars; and
      - (IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.
- (4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as “ANSI A117.1”) suffices to satisfy the requirements of paragraph (3)(C)(iii).
- (5)
- (A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.
  - (B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.
  - (C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).
  - (D) Nothing in this subchapter shall be construed to require the Secretary to review or approve the

plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

- (6)
  - (A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 3610(f)(3) of this title to receive and process complaints or otherwise engage in enforcement activities under this subchapter.
  - (B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this subchapter.
- (7) As used in this subsection, the term “covered multifamily dwellings” means —
  - (A) buildings consisting of 4 or more units if such buildings have one or more elevators; and
  - (B) ground floor units in other buildings consisting of 4 or more units.
- (8) Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this subchapter shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subchapter.
- (9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. [\(49\)](#)



## National Housing Rights Legislation



### France

Law 94-624 (1994) <sup>(41)</sup>

[Law 94-624 imposes legal obligations on the local authorities to provide urgent assistance to homeless people and those threatened by homelessness. The law commits departments to elaborating a plan for urgent accommodation of homeless and low-income people by 31 December 1994. Communes with 10,000 to 100,000 inhabitants are obliged to provide one place for the homeless per 2,000 of its inhabitants, and communes with more than 100,000 inhabitants, one emergency accommodation place for every 1,000 inhabitants.] <sup>(42)</sup>



## National Housing Rights Legislation



### Guatemala

Accord for the Resettlement of the Populations Uprooted by the Armed Confrontation (17 June 1994)

#### Objectives:

To guarantee to the displaced population the full exercise of all their fundamental rights and liberties, in particular those rights and liberties which were affected by the process of displacement. To develop and strengthen the democratization of state structures which will guarantee the exercise by the displaced populations of their constitutional rights and obligations on community, municipal, departmental regional and national levels.



## National Housing Rights Legislation



### United Kingdom Housing Act (1985, as amended)

#### Section 9. Provision of Housing Accommodation

- (1) A local housing authority may provide housing accommodation -
  - (a) by erecting houses, or converting buildings into houses, on land acquired by them for the purposes of this Part, or
  - (b) by acquiring houses.
- (2) The authority may alter, enlarge, repair or improve a house so erected, converted or acquired.
- (3) These powers may equally be exercised in relation to land acquired for the purposes
  - (a) of disposing of houses provided, or to be provided, on the land, or
  - (b) of disposing of the land to a person who intends to provide housing accommodation on it.
- (4) A local housing authority may not under this Part provide a cottage with a garden of more than one acre.
- (5) Nothing in this Act shall be taken to require (or to have any time required) a local housing authority itself to acquire or hold any houses or other land for the purposes of this Part. (amendment under section 161 of the Local Government and Housing Act (1989)).

#### Section 22.

A local housing authority shall secure that in the selection of their tenants a reasonable preference is given to -

- (a) persons occupying insanitary or overcrowded houses;
- (b) persons have large families;
- (c) persons living under unsatisfactory housing conditions;
- (d) persons towards whom the authority are subject to a duty under section 65 to 68 (persons found to be homeless).

#### Section 58. (A) Homeless

- (1) A person is homeless if he has no accommodation in England, Wales or Scotland.
- (2) A person shall be treated as having no accommodation if there is no accommodation which he, together with any other person who normally resides with him as a member of his family or in circumstances in which it is reasonable for that person to reside with him—
  - (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court, or
  - (b) has an express or implied license to occupy, or in Scotland has a right or permission or an implied right or permission to occupy, or
  - (c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.
- (2A) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to occupy.
- (2B) Regard may be had, in determining whether it would be reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the district of the local housing authority to whom he has applied for accommodation or for assistance in obtaining accommodation.
- (3) A person is also homeless if he has accommodation but —
  - (a) he cannot secure entry to it, or
  - (b) it is probable that occupation of it will lead to violence from some other person residing in it or to threats of violence from some other person residing in it and likely to carry out the threats, or
  - (c) it consists of a movable structure, vehicle or vessel designed or adapted for human habitation and

there is no place where he is entitled or permitted both to place it and to reside in it.

(4) A person is threatened with homelessness if it is likely that he will become homeless within 28 days.

#### Section 59.

(1) The following have a priority need for accommodation —

- (a) a pregnant woman or a person with whom a pregnant woman resides or might reasonably be expected to reside;
- (b) a person with whom dependent children reside or might reasonably be expected to reside;
- (c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;
- (d) a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster.

(2) The Secretary of State may by order made by statutory instrument —

- (a) specify further descriptions of person as having a priority need for accommodation, and
- (b) amend or repeal any part of subsection (1).

(3) Before making such an order the Secretary of State shall consult such associations representing relevant authorities, and such other persons, as he considers appropriate.

(4) No order shall be made unless a draft of it has been approved by resolution of each House of Parliament.

#### Section 60.

(1) A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.

(2) A person becomes threatened with homelessness intentionally if he deliberately does or fails to do anything the likely result of which is that he will be forced to leave accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.

(3) For the purposes of subsection (1) or (2) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate.

(4) Regard may be had, in determining whether it would have been reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the district of the local housing authority to whom he applied for accommodation or for assistance in obtaining accommodation.

#### Section 61.

(1) References in this Part to a person having a local connection with the district of a local housing authority are to his having a connection with that district —

- (a) because he is, or in the past was, normally resident in that district, and that residence is or was of his own choice, or
- (b) because he is employed in that district, or
- (c) because of family associations, or
- (d) because of social circumstances.

(2) For the purposes of this section —

- (a) a person is not employed in a district if he is serving in the regular armed forces of the Crown;
- (b) residence in a district is not of a person's own choice if he becomes resident in it because he, or a person who might reasonably be expected to reside with him, is serving in the regular armed forces of the Crown.

(3) Residence in a district is not of a person's own choice for the purpose of this section if he, or a person who might reasonably be expected to reside with him, became resident in it because he was detained under the authority of an Act of Parliament.

(4) The Secretary of State may by order specify other circumstances in which —

- (a) a person is not to be treated for the purposes of this section as employed in a district, or
  - (b) residence in a district is not to be treated for those purposes as of a person's own choice.
- (5) An order shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Section 62.

- (1) If a person (an "applicant") applies to a local housing authority for accommodation, or for assistance in obtaining accommodation, and the authority have reason to believe that he may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves as to whether he is homeless or threatened with homelessness.
- (2) If they are so satisfied, they shall make any further inquiries necessary to satisfy themselves as to —
  - (a) whether he has a priority need, and
  - (b) whether he became homeless or threatened with homelessness intentionally;
 And if they think fit they may also make inquiries as to whether he has a local connection with the district of another local housing authority in England, Wales or Scotland.

#### Section 63.

Interim duty to accommodate in case of apparent priority need

- (1) If the local housing authority have reason to believe that an applicant may be homeless and have a priority need, they shall secure that accommodation is made available for his occupation pending a decision as a result of their inquiries under section 62.
- (2) The duty arises irrespective of any local connection which the applicant may have the district of another local authority.

#### Section 64.

- (1) On completing their inquiries under section 62, the local housing authority shall notify the applicant of their decision on the question whether he is homeless or threatened with homelessness.
- (2) If they notify him that their decision is that he is homeless or threatened with homelessness, they shall at the same time notify him of their decision on the question whether he has a priority need.
- (3) If they notify him that their decision is that he has a priority need, they shall at the same time notify him —
  - (a) of their decision whether he became homeless or threatened with homelessness intentionally, and
  - (b) whether they have notified or propose to notify another local housing authority under section 67 (referral of application on grounds of local connection).
- (4) If the local housing authority notify the applicant —
  - (a) that they are not satisfied that he is homeless or threatened with homelessness, or
  - (b) that they are not satisfied that he has a priority need, or
  - (c) that they are satisfied that he became homeless or threatened with homelessness intentionally, or
  - (d) that they have notified or propose to notify another local housing authority under section 67 (referral of application on grounds of local connection),
 They shall at the same time notify him of their reasons.
- (5) The notice required to be given to a person under this section shall be given in writing and shall, if not received by him, be treated as having been given to him only if it is made available at the authority's office for a reasonable period for collection by him or on his behalf.

#### Section 65. Duties to persons found to be homeless.

- (1) This section has effect as regards the duties owed by the local housing authority to an applicant where they are satisfied that he is homeless.
- (2) Where they are satisfied that he has a priority need and are not satisfied that he became homeless intentionally, they shall, unless they notify another local housing authority in accordance with section 67 (referral of application on grounds of local connection), secure that accommodation becomes available for his occupation.



- (3) Where they are satisfied that he has a priority need but are also satisfied that he became homeless intentionally, they shall -
  - (a) secure that accommodation is made available for his occupation for such period as they consider will give him a reasonable opportunity of securing accommodation for his occupation, and
  - (b) furnish him with advice and such assistance as they consider appropriate in the circumstances in any attempts he may make to secure that accommodation becomes available for his occupation.

#### Section 66. Duties to persons found to be threatened with homelessness

- (1) This section has effect as regards the duties owed by the local housing authority to an applicant where they are satisfied that he is threatened with homelessness.
- (2) Where they are satisfied that he has a priority need and are not satisfied that he become threatened with homelessness intentionally, they shall take reasonable steps to secure that accommodation does not cease to be available for his occupation.

#### Section 67.

- (1) If the local housing authority —
  - (a) are satisfied that an applicant is homeless and has a priority need, and are not satisfied that he became homeless intentionally, but
  - (b) are of opinion that the conditions are satisfied for referral of his application to another local housing authority in England, Wales and Scotland,  
They may notify that other authority of the fact that his application has been made and that they are of that opinion.
- (2) The conditions for referral of an application to another local authority are —
  - (a) that neither the applicant nor any person who might reasonably be expected to reside with him has a local connection with the district of the authority to whom the application was made,
  - (b) that the applicant or a person who might reasonably be expected to reside with him has a local connection with the district of that other authority, and
  - (c) that neither the applicant nor any person who might reasonably be expected to reside with him will run the risk of domestic violence in that other district.
- (3) For this purpose a person runs the risk of domestic violence —
  - (a) if he runs the risk of violence from a person with whom, but for the risk of violence, he might reasonably be expected to reside, or from a person with whom he formerly resided, or
  - (b) if he runs the risk of threats of violence from such a person which are likely to be carried out.
- (4) The question whether the conditions for referral of an application are satisfied shall be determined by agreement between the notifying authority and the notified authority or, in default of agreement, in accordance with such arrangements as the Secretary of State may direct by order made by statutory instrument.
- (5) An order may direct that the arrangements shall be —
  - (a) those agreed by any relevant authorities or associations of relevant authorities, or
  - (b) in default of such agreement, such arrangements as appear to the Secretary of State to be suitable, after consultation with such associations representing relevant authorities, and such other persons, as he thinks appropriate.
- (6) No order shall be made unless a draft of the order has been approved by resolution of each House of Parliament.

#### Section 68.

- (1) Where, in accordance with section 67(1), a local housing authority notifies another authority of an application, the notifying authority shall secure that accommodation is available for occupation by the applicant until it is determined whether the conditions for referral of his application to the other authority are satisfied.
- (2) If it is determined that the conditions for referral are satisfied, the notified authority shall secure that accommodation becomes available for occupation by the applicant; if it is determined that the conditions

are not satisfied, the notifying authority shall secure that accommodation becomes available for occupation by him.

- (3) When the matter has been determined, the notifying authority shall notify the applicant —
  - (a) whether they or the notified authority are the authority whose duty it is to secure that accommodation becomes available for his occupation, and
  - (b) of the reasons why the authority subject to that duty are subject to it.
- (4) The notice required to be given to a person under subsection (3) shall be given in writing and shall, if not received by him, be treated as having been given to him only if it is made available at the authority's office for a reasonable period for collection by him or on his behalf.

#### Section 69.

- (1) A local housing authority may perform any duty under section 65 or 68 (duties to persons found to be homeless) to secure that accommodation becomes available for the occupation of a person —
  - (a) by making available suitable accommodation held by them under Part II (provision of housing) or any enactment, or
  - (b) by securing that he obtains suitable accommodation from some other person, or
  - (c) by giving him such advice and assistance as will secure that he obtains suitable accommodation from some other person,And in determining whether accommodation is suitable they shall have regard to Part IX (slum clearance), X (overcrowding) and XI (houses in multiple occupation) of this Act.



## National Housing Rights Legislation



### United Kingdom

#### Homeless Persons Act (1977, as amended by the Housing Act of 1996)

#### PART VII: Homelessness

##### *Homelessness and threatened homelessness*

175.

- (1) A person is homeless if he has no accommodation available for his occupation, in the United Kingdom or elsewhere, which he-
  - (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,
  - (b) has an express or implied licence to occupy, or
  - (c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.
- (2) A person is also homeless if he has accommodation but-
  - (a) he cannot secure entry to it, or
  - (b) it consists of a moveable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it.
- (3) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.
- (4) A person is threatened with homelessness if it is likely that he will become homeless within 28 days.

176.

Accommodation shall be regarded as available for a person's occupation only if it is available for occupation by him together with-

- (a) any other person who normally resides with him as a member of his family, or
- (b) any other person who might reasonably be expected to reside with him.

References in this Part to securing that accommodation is available for a person's occupation shall be construed accordingly.

177.

- (1) It is not reasonable for a person to continue to occupy accommodation if it is probable that this will lead to domestic violence against him, or against-
  - (a) a person who normally resides with him as a member of his family, or
  - (b) any other person who might reasonably be expected to reside with him.

For this purpose "domestic violence", in relation to a person, means violence from a person with whom he is associated, or threats of violence from such a person which are likely to be carried out.

- (2) In determining whether it would be, or would have been, reasonable for a person to continue to occupy accommodation, regard may be had to the general circumstances prevailing in relation to housing in the district of the local housing authority to whom he has applied for accommodation or for assistance in obtaining accommodation.
- (3) The Secretary of State may by order specify-
  - (a) other circumstances in which it is to be regarded as reasonable or not reasonable for a person to continue to occupy accommodation, and
  - (b) other matters to be taken into account or disregarded in determining whether it would be, or would have been, reasonable for a person to continue to occupy accommodation.

178.

- (1) For the purposes of this Part, a person is associated with another person if-
- (a) they are or have been married to each other;
  - (b) they are cohabitants or former cohabitants;
  - (c) they live or have lived in the same household;
  - (d) they are relatives;
  - (e) they have agreed to marry one another (whether or not that agreement has been terminated);
  - (f) in relation to a child, each of them is a parent of the child or has, or has had, parental responsibility for the child.
- (2) If a child has been adopted or has been freed for adoption by virtue of any of the enactments mentioned in section 16(1) of the Adoption Act 1976, two persons are also associated with each other for the purposes of this Part if-
- (a) one is a natural parent of the child or a parent of such a natural parent, and
  - (b) the other is the child or a person-
    - (i) who has become a parent of the child by virtue of an adoption order or who has applied for an adoption order, or
    - (ii) with whom the child has at any time been placed for adoption.
- (3) In this section-
- "adoption order" has the meaning given by section 72(1) of the Adoption Act 1976;
  - "child" means a person under the age of 18 years;
  - "cohabitants" means a man and a woman who, although not married to each other, are living together as husband and wife, and "former cohabitants" shall be construed accordingly;
  - "parental responsibility" has the same meaning as in the Children Act 1989; and
  - "relative", in relation to a person, means-
    - (a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person's spouse or former spouse, or
    - (b) the brother, sister, uncle, aunt, niece or nephew (whether of the full blood or of the half blood or by affinity) of that person or of that person's spouse or former spouse,
- and includes, in relation to a person who is living or has lived with another person as husband and wife, a person who would fall within paragraph (a) or (b) if the parties were married to each other.

*General functions in relation to homelessness or threatened homelessness*

179.

- (1) Every local housing authority shall secure that advice and information about homelessness, and the prevention of homelessness, is available free of charge to any person in their district.
- (2) The authority may give to any person by whom such advice and information is provided on behalf of the authority assistance by way of grant or loan.
- (3) A local housing authority may also assist any such person-
  - (a) by permitting him to use premises belonging to the authority,
  - (b) by making available furniture or other goods, whether by way of gift, loan or otherwise, and
  - (c) by making available the services of staff employed by the authority.

180.

- (1) The Secretary of State or a local housing authority may give assistance by way of grant or loan to voluntary organisations concerned with homelessness or matters relating to homelessness.
- (2) A local housing authority may also assist any such organisation-
  - (a) by permitting them to use premises belonging to the authority,

- (b) by making available furniture or other goods, whether by way of gift, loan or otherwise, and
  - (c) by making available the services of staff employed by the authority.
- (3) A "voluntary organisation" means a body (other than a public or local authority) whose activities are not carried on for profit.

181.

- (1) This section has effect as to the terms and conditions on which assistance is given under section 179 or 180.
- (2) Assistance shall be on such terms, and subject to such conditions, as the person giving the assistance may determine.
- (3) No assistance shall be given unless the person to whom it is given undertakes-
  - (a) to use the money, furniture or other goods or premises for a specified purpose, and
  - (b) to provide such information as may reasonably be required as to the manner in which the assistance is being used.

The person giving the assistance may require such information by notice in writing, which shall be complied with within 21 days beginning with the date on which the notice is served.

- (4) The conditions subject to which assistance is given shall in all cases include conditions requiring the person to whom the assistance is given-
  - (a) to keep proper books of account and have them audited in such manner as may be specified,
  - (b) to keep records indicating how he has used the money, furniture or other goods or premises, and
  - (c) to submit the books of account and records for inspection by the person giving the assistance.
- (5) If it appears to the person giving the assistance that the person to whom it was given has failed to carry out his undertaking as to the purpose for which the assistance was to be used, he shall take all reasonable steps to recover from that person an amount equal to the amount of the assistance.
- (6) He must first serve on the person to whom the assistance was given a notice specifying the amount which in his opinion is recoverable and the basis on which that amount has been calculated.

182.

- (1) In the exercise of their functions relating to homelessness and the prevention of homelessness, a local housing authority or social services authority shall have regard to such guidance as may from time to time be given by the Secretary of State.
- (2) The Secretary of State may give guidance either generally or to specified descriptions of authorities.

*Application for assistance in case of homelessness or threatened homelessness*

183.

- (1) The following provisions of this Part apply where a person applies to a local housing authority for accommodation, or for assistance in obtaining accommodation, and the authority have reason to believe that he is or may be homeless or threatened with homelessness.
- (2) In this Part-
  - "applicant" means a person making such an application,
  - "assistance under this Part" means the benefit of any function under the following provisions of this Part relating to accommodation or assistance in obtaining accommodation, and
  - "eligible for assistance" means not excluded from such assistance by section 185 (persons from abroad not eligible for housing assistance) or section 186 (asylum seekers and their dependants).
- (3) Nothing in this section or the following provisions of this Part affects a person's entitlement to advice and information under section 179 (duty to provide advisory services).

184.

- (1) If the local housing authority have reason to believe that an applicant may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves-
  - (a) whether he is eligible for assistance, and

(b) if so, whether any duty, and if so what duty, is owed to him under the following provisions of this Part.

- (2) They may also make inquiries whether he has a local connection with the district of another local housing authority in England, Wales or Scotland.
- (3) On completing their inquiries the authority shall notify the applicant of their decision and, so far as any issue is decided against his interests, inform him of the reasons for their decision.
- (4) If the authority have notified or intend to notify another local housing authority under section 198 (referral of cases), they shall at the same time notify the applicant of that decision and inform him of the reasons for it.
- (5) A notice under subsection (3) or (4) shall also inform the applicant of his right to request a review of the decision and of the time within which such a request must be made (see section 202).
- (6) Notice required to be given to a person under this section shall be given in writing and, if not received by him, shall be treated as having been given to him if it is made available at the authority's office for a reasonable period for collection by him or on his behalf.

### *Eligibility for assistance*

#### 185.

- (1) A person is not eligible for assistance under this Part if he is a person from abroad who is ineligible for housing assistance.
- (2) A person who is subject to immigration control within the meaning of the Asylum and Immigration Act 1996 is not eligible for housing assistance unless he is of a class prescribed by regulations made by the Secretary of State.
- (3) The Secretary of State may make provision by regulations as to other descriptions of persons who are to be treated for the purposes of this Part as persons from abroad who are ineligible for housing assistance.
- (4) A person from abroad who is not eligible for housing assistance shall be disregarded in determining for the purposes of this Part whether another person-
  - (a) is homeless or threatened with homelessness, or
  - (b) has a priority need for accommodation.

#### 186.

- (1) An asylum-seeker, or a dependant of an asylum-seeker who is not by virtue of section 185 a person from abroad who is ineligible for housing assistance, is not eligible for assistance under this Part if he has any accommodation in the United Kingdom, however temporary, available for his occupation.
- (2) For the purposes of this section a person who makes a claim for asylum-
  - (a) becomes an asylum-seeker at the time when his claim is recorded by the Secretary of State as having been made, and
  - (b) ceases to be an asylum-seeker at the time when his claim is recorded by the Secretary of State as having been finally determined or abandoned.
- (3) For the purposes of this section a person-
  - (a) becomes a dependant of an asylum-seeker at the time when he is recorded by the Secretary of State as being a dependant of the asylum-seeker, and
  - (b) ceases to be a dependant of an asylum-seeker at the time when the person whose dependant he is ceases to be an asylum-seeker or, if it is earlier, at the time when he is recorded by the Secretary of State as ceasing to be a dependant of the asylum-seeker.
- (4) In relation to an asylum-seeker, "dependant" means a person-
  - (a) who is his spouse or a child of his under the age of eighteen, and
  - (b) who has neither a right of abode in the United Kingdom nor indefinite leave under the Immigration Act 1971 to enter or remain in the United Kingdom.
- (5) In this section a "claim for asylum" means a claim made by a person that it would be contrary to the United Kingdom's obligations under the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and the Protocol to that Convention for him to be removed from, or required to leave, the United Kingdom.

187.

- (1) The Secretary of State shall, at the request of a local housing authority, provide the authority with such information as they may require-
  - (a) as to whether a person is or has become an asylum-seeker, or a dependant of an asylum-seeker, and
  - (b) to enable them to determine whether such a person is eligible for assistance under this Part under section 185 (persons from abroad not eligible for housing assistance).
- (2) Where that information is given otherwise than in writing, the Secretary of State shall confirm it in writing if a written request is made to him by the authority.
- (3) If it appears to the Secretary of State that any application, decision or other change of circumstances has affected the status of a person about whom information was previously provided by him to a local housing authority under this section, he shall inform the authority in writing of that fact, the reason for it and the date on which the previous information became inaccurate.

*Interim duty to accommodate*

188.

- (1) If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they shall secure that accommodation is available for his occupation pending a decision as to the duty (if any) owed to him under the following provisions of this Part.
- (2) The duty under this section arises irrespective of any possibility of the referral of the applicant's case to another local housing authority (see sections 198 to 200).
- (3) The duty ceases when the authority's decision is notified to the applicant, even if the applicant requests a review of the decision (see section 202).

The authority may continue to secure that accommodation is available for the applicant's occupation pending a decision on a review.

189.

- (1) The following have a priority need for accommodation-
  - (a) a pregnant woman or a person with whom she resides or might reasonably be expected to reside;
  - (b) a person with whom dependent children reside or might reasonably be expected to reside;
  - (c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;
  - (d) a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster.
- (2) The Secretary of State may by order-
  - (a) specify further descriptions of persons as having a priority need for accommodation, and
  - (b) amend or repeal any part of subsection (1).
- (3) Before making such an order the Secretary of State shall consult such associations representing relevant authorities, and such other persons, as he considers appropriate.
- (4) No such order shall be made unless a draft of it has been approved by resolution of each House of Parliament.

*Duties to persons found to be homeless or threatened with homelessness*

190.

- (1) This section applies where the local housing authority are satisfied that an applicant is homeless and is eligible for assistance but are also satisfied that he became homeless intentionally.
- (2) If the authority are satisfied that the applicant has a priority need, they shall-
  - (a) secure that accommodation is available for his occupation for such period as they consider will give him a reasonable opportunity of securing accommodation for his occupation, and
  - (b) provide him with advice and such assistance as they consider appropriate in the circumstances in any

attempts he may make to secure that accommodation becomes available for his occupation.

- (3) If they are not satisfied that he has a priority need, they shall provide him with advice and such assistance as they consider appropriate in the circumstances in any attempts he may make to secure that accommodation becomes available for his occupation.

191.

- (1) A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.
- (2) For the purposes of subsection (1) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate.
- (3) A person shall be treated as becoming homeless intentionally if-
  - (a) he enters into an arrangement under which he is required to cease to occupy accommodation which it would have been reasonable for him to continue to occupy, and
  - (b) the purpose of the arrangement is to enable him to become entitled to assistance under this Part, and there is no other good reason why he is homeless.
- (4) A person who is given advice or assistance under section 197 (duty where other suitable alternative accommodation available), but fails to secure suitable accommodation in circumstances in which it was reasonably to be expected that he would do so, shall, if he makes a further application under this Part, be treated as having become homeless intentionally.

192.

- (1) This section applies where the local housing authority-
  - (a) are satisfied that an applicant is homeless and eligible for assistance, and
  - (b) are not satisfied that he became homeless intentionally, but are not satisfied that he has a priority need.
- (2) The authority shall provide the applicant with advice and such assistance as they consider appropriate in the circumstances in any attempts he may make to secure that accommodation becomes available for his occupation.

193.

- (1) This section applies where the local housing authority are satisfied that an applicant is homeless, eligible for assistance and has a priority need, and are not satisfied that he became homeless intentionally.

This section has effect subject to section 197 (duty where other suitable accommodation available).

- (2) Unless the authority refer the application to another local housing authority (see section 198), they shall secure that accommodation is available for occupation by the applicant.
- (3) The authority are subject to the duty under this section for a period of two years ("the minimum period"), subject to the following provisions of this section.

After the end of that period the authority may continue to secure that accommodation is available for occupation by the applicant, but are not obliged to do so (see section 194).

- (4) The minimum period begins with-
  - (a) if the applicant was occupying accommodation made available under section 188 (interim duty to accommodate), the day on which he was notified of the authority's decision that the duty under this section was owed to him;
  - (b) if the applicant was occupying accommodation made available to him under section 200(3) (interim duty where case considered for referral but not referred), the date on which he was notified under subsection (2) of that section of the decision that the conditions for referral were not met;
  - (c) in any other case, the day on which accommodation was first made available to him in pursuance of the duty under this section.
- (5) The local housing authority shall cease to be subject to the duty under this section if the applicant, having been informed by the authority of the possible consequence of refusal, refuses an offer of accommodation which the authority are satisfied is suitable for him and the authority notify him that they regard themselves as having discharged their duty under this section.



- (6) The local housing authority shall cease to be subject to the duty under this section if the applicant-
- (a) ceases to be eligible for assistance,
  - (b) becomes homeless intentionally from the accommodation made available for his occupation,
  - (c) accepts an offer of accommodation under Part VI (allocation of housing), or
  - (d) otherwise voluntarily ceases to occupy as his only or principal home the accommodation made available for his occupation.
- (7) The local housing authority shall also cease to be subject to the duty under this section if-
- (a) the applicant, having been informed of the possible consequence of refusal, refuses an offer of accommodation under Part VI, and
  - (b) the authority are satisfied that the accommodation was suitable for him and that it was reasonable for him to accept it and notify him accordingly within 21 days of the refusal.
- (8) For the purposes of subsection (7) an applicant may reasonably be expected to accept an offer of accommodation under Part VI even though he is under contractual or other obligations in respect of his existing accommodation, provided he is able to bring those obligations to an end before he is required to take up the offer.
- (9) A person who ceases to be owed the duty under this section may make a fresh application to the authority for accommodation or assistance in obtaining accommodation.



## National Housing Rights Legislation



### United States of America

Civil Rights Code (1987, as amended, "The McKinney Act") <sup>(43)</sup>

Section 11301. Findings and purpose:

#### (a) Findings

The Congress finds that —

- (1) the Nation faces an immediate and unprecedented crisis due to the lack of shelter for a growing number of individuals and families, including elderly persons, handicapped persons, families with children, Native Americans, and veterans;
- (2) the problem of homelessness has become more severe and, in the absence of more effective efforts, is expected to become dramatically worse, endangering the lives and safety of the homeless;
- (3) the causes of homelessness are many and complex, and homeless individuals have diverse needs;
- (4) there is no single, simple solution to the problem of homelessness because of the different subpopulations of the homeless, the different causes of and reasons for homelessness, and the different needs of homeless individuals;
- (5) due to the record increase in homelessness, States, units of local government, and private voluntary organizations have been unable to meet the basic human needs of all the homeless and, in the absence of greater Federal assistance, will be unable to protect the lives and safety of all the homeless in need of assistance; and
- (6) the Federal Government has a clear responsibility and an existing capacity to fulfill a more effective and responsible role to meet the basic human needs and to engender respect for the human dignity of the homeless.

#### (b) Purpose

It is the purpose of this chapter —

- (1) to establish an Interagency Council on the Homeless;
- (2) to use public resources and programs in a more coordinated manner to meet the critically urgent needs of the homeless of the Nation; and
- (3) to provide funds for programs to assist the homeless, with special emphasis on elderly persons, handicapped persons, families with children, Native Americans, and veterans. <sup>(44)</sup>



## National Housing Rights Legislation



### Restitution

A number of judicial and quasi-judicial remedies exist for violations of housing rights. Two of the more prominent remedies include restitution and compensation.

Restitution and compensation are increasingly recognised as important remedies for violations of housing rights, including forced evictions. Furthermore, housing and property restitution is seen as an essential for the voluntary return of refugees and internally displaced persons (IDPs) to their original homes. Indeed, international law increasingly views the right to return as encompassing not merely the right to return to one's country of origin, but to return to one's original home.



## National Housing Rights Legislation



### Bosnia and Herzegovina

Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens (3 April 1998) (Bosnia and Herzegovina) <sup>(55)</sup>

#### I. GENERAL PROVISIONS

##### Article 1

From the day of the entry into force of this law, the Law on Temporary Abandoned Real Property Owned by Citizens (Official Gazette RBiH 11/93, 13/94 - hereinafter: the Law) and regulations regulating the issue of temporary abandoned property owned by citizens in the period between 30 April 1991 and the entry into force of this law, shall cease to be applied on the territory of the Federation of Bosnia and Herzegovina (hereinafter: the Federation).

##### Article 2

From the day of the entry into force of this Law, the bodies and authorities of the Federation and other bodies in the Federation ( hereinafter: the competent authorities) shall refrain from undertaking any new actions by which real property owned by citizens is declared abandoned or placed under municipal administration.

##### Article 3

Real property declared abandoned and placed under municipal administration on the basis of the Law on Temporary Abandoned Real Property Owned by Citizens shall remain under municipal administration until the return of the real property to the owner pursuant to the provisions of this Law.

##### Article 4

Owner of the real property declared abandoned shall have the right to file a claim for the return of the real property at any time.

##### Article 5

For the purpose of this Law, the owner shall be understood to mean a person which, according to the legislation in force, was the owner of the real property at the moment when that property was declared abandoned.

The owner of the real property may authorize another person to submit the claim for the return of the real property.

##### Article 6

The user to whom the real property has been allocated for temporary use on the basis of the Law on Temporary Abandoned Real Property (hereinafter: the temporary user), shall continue to use the real property under the conditions and in the manner which were prescribed by the Law on Temporary Abandoned Real Property, until the issuance of a decision under Article 12 of this Law.

##### Article 7

If a temporary user who has been ordered to vacate the property pursuant to the provisions of this Law has no possibility to return to the apartment in which he was living until 30 April 1991 and no other housing unit satisfying the requirements of emergency or appropriate accommodation has been provided to him/her, the competent service of the municipality on the territory of which s/he enjoyed the latest domicile or residence shall, within the deadline set by the decision for his/her vacation of the property, provide him/her with an emergency accommodation or an appropriate accommodation if, pursuant to Article 8(4) of the Law on Housing Relations, this person cannot be lodged in an emergency accommodation.

The authorities responsible to provide an emergency accommodation shall not be obliged to provide either an emergency or appropriate accommodation to persons occupying the property without a valid legal title.

In no event shall the failure of the municipality to meet its obligations under Paragraph 1 of this Article operate to delay the ability of the owner to reclaim his property.

##### Article 8

For the purposes of this Law, an emergency accommodation shall be understood to mean the emergency accommodation pursuant to Article 8 of the Law on Housing Relations (Official Gazette of SR BiH 4/84, 12/86, 36/89).

## Article 9

Parties in proceedings instituted at the owner's request for repossession of the real property shall be the owner of the real property and the temporary occupant at the time the request was submitted.

## II. RETURN OF REAL PROPERTY TO THE OWNER

### Article 10

The owner of private property has the right to claim at any time from the competent authorities the repossession of his/her property which has been declared abandoned or allocated for temporary use.

### Article 11

A claim for repossession of a property under Article 10 of this Law shall be filed by the owner to the competent municipal, city or cantonal administrative body competent for property - law affairs.

The claim shall be submitted in writing, signed by the owner or orally, in person by the owner or an authorized representative. A claim should include:

1. all necessary information on the property;
2. any evidence in possession of the claimant that the claimant is the owner;
3. the date when the owner intends to reoccupy the property.

The claim for repossession of property referred to in Paragraph 1 of this Article shall not be subject to the statute of limitations.

### Article 12

Upon the receipt of the owner's claim for the return of the property, the competent body shall issue a decision on the return of the property to the owner within a period of 30 days from the date of the receipt of the claim.

The decision referred to in paragraph 1 of this Article by which the owner's claim is accepted shall contain:

1. a decision terminating the municipal administration of the property as of the date of the intended return;
2. a decision on repossession of the property by the owner;
3. a decision terminating the right of the temporary user to use the property as of the date of the intended return of the owner;
4. a time limit for vacating the property by the temporary user or the person using the property without a valid legal title, or the time limit for returning the land;
5. a decision whether the temporary user is entitled to emergency accommodation.

The deadline for vacating the property, referred to in Paragraph 2(4) of this Article may not be shorter than 90 days from the date of the issuance of the decision, nor longer than the day of intended return of the owner and the day of intended return may not be earlier than 90 days from the date of submitting the claim for return of the property.

In exceptional circumstances, the deadline referred to in Paragraph 3 of this Article may be extended to up to one year if the municipality responsible for providing alternative accommodation in accordance with Article 7(1) of this Law provides detailed documentation regarding its efforts to secure alternative accommodation to the Federation Ministry of Urban Planning and Environment, and upon a finding by the Ministry that there exists a documented absence of available housing in the municipality.

In case of the return of arable land, the time limit referred to in Paragraph 2 (4) of this Article may be extended until the harvest is completed.

### Article 13

The competent authority must notify the owner of the property and the temporary user of the property.

Any appeal against the decision must be submitted to the cantonal administrative body competent for the property law affairs within 15 days from the date of receipt of the decision.

An appeal shall not suspend the execution of the decision.

### Article 14

A party affected by a decision made under Article 12 may at any time file a claim to the Commission for Real Property Claims of Displaced Persons and Refugees (GFAP, Annex 7 hereinafter the Property Commission).

In the event that a proceeding from Paragraph 1 of this Article is initiated, all other proceedings before the competent authorities, including the enforcement of decision referred to in Article 12 of this Law, shall be stayed pending the final decision of the Property Commission.

A decision of the Property Commission is final and binding.

Regarding the rights and obligations of a party referred to in Paragraph 1. of this Article, the decision of the Property Commission shall have the same legal force as a decision of any other competent authority made in accordance with this Law.

#### Article 15

The return of the property to the owner shall be witnessed by an official of the competent office of the municipality referred to in Article 11, paragraph 1 of this Law.

The return of the property and the entering into possession by the owner shall be recorded in the minutes including, among other things, a detailed description of the current state of the premises and the movable property therein.

#### Article 16

If the person occupying the property fails to voluntarily comply with the decision ordering him/her to vacate the property the competent authority shall employ compulsory enforcement, in accordance with the law.

The enforcement shall be carried out at the request of the owner.

#### Article 17

The proceedings for the repossession of real property by the owner as determined in this law and proceedings of the compulsory enforcement referred to in Article 16 of this law shall be carried out in accordance with the Law on General Administrative Procedure(Official Gazette 2/92 and 13/94) which is applicable in the territory of the Federation until the competent authorities decide otherwise, based on Article IX.5 (1) of the Federation Constitution.

#### Article 18

This law shall enter into force on the day following its publication in the “Official Gazette” of the Federation of Bosnia and Herzegovina.



## National Housing Rights Legislation



### Bosnia and Herzegovina

#### Law on the Cessation of the Application of the Law on Abandoned Apartments (1998) (Bosnia and Herzegovina) (relevant provisions) <sup>(58)</sup>

#### I. GENERAL PROVISIONS

##### Article 1

The Law on Abandoned Apartments (“Official Gazette of RBH” no. 6/92, 8/92, 16/92, 13/94, 36/94, 9/95 and 33/95), Decree on Use of Abandoned Apartments (Official Gazette HZHB 13/93) and the regulations passed there under, as well as other regulations regulating the issue of abandoned apartments passed between 30 April 1991 and the entry into force of this Law which are being applied on the territory of the Federation of Bosnia and Herzegovina (hereinafter: the Federation) shall cease to be applied on the day of the entry into force of this law.

Following the entry into force of this Law, the authorities of the Federation and other bodies in the Federation shall refrain from undertaking any new actions by which apartments will be declared abandoned.

The competent bodies referred to in Paragraph 2 of this Article shall decide about the rights of occupancy right holders to return to their apartments which have been declared temporarily or permanently abandoned and the rights of temporary occupants of the abandoned apartment, and about further use of the apartment, in accordance with the provisions of this Law and the Law on Taking over the Law on Housing Relations (hereinafter: the ZOSO).

##### Article 2

All administrative, judicial and any other decisions enacted on the basis of the regulations referred to in Paragraph 1 of Article 1 of this Law terminating occupancy rights shall be null and void.

All administrative, judicial and any other decisions enacted on the basis of the regulations referred to in Paragraph 1 of Article 1 of this Law in which rights of temporary occupancy have been created shall remain effective until cancelled in accordance with this Law. Persons who moved into apartments on the basis of acts which have expired shall be considered to be temporary users. Article 3, Paragraph 3 of this Law shall not apply to such persons.

All administrative, judicial and any other decisions including the acts of allocation right holders enacted on the basis of the regulations referred to in Paragraph 1 of Article 1 of this Law in which new occupancy rights are created, as well as the contracts concluded pursuant to those acts, shall remain in force unless cancelled in accordance with this Law.

##### Article 3

The occupancy right holder of an apartment declared abandoned or a member of his/her household as defined in Article 6 of the ZOSO (hereinafter the “occupancy right holder”) shall have the right to return in accordance with Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina.

Paragraph 1 of this Article shall be applied only to those occupancy right holders who have the right to return to their homes of origin under Annex 7, Article 1 of the General Framework Agreement for Peace in Bosnia and Herzegovina. Persons who have left their apartments since 30 April 1991 are presumed to be refugees and displaced persons under Annex 7 absent a showing that they left their apartments for reasons wholly unrelated to the conflict.

Holder of occupancy right in the apartment which is inhabited by a person using the apartment without legal basis or which is vacant as of the date this Law enters into force shall be able, without any restrictions, to repossess the apartment in which he has an occupancy right. Persons using the apartment without legal basis shall be evicted and the authorities competent for allocation of emergency accommodation shall not be obliged to provide emergency accommodation to such persons.

A temporary user of an apartment who is required to vacate the apartment pursuant to the provisions of this Law and whose housing needs are otherwise met shall be obliged to move out from the apartment that he/she has been using within 90 days of the date of the issuance of the Decision by which it has been decided about the right of an occupancy right holder to the relevant apartment (hereinafter: the Decision under Article 6).

A temporary user of an apartment who is required to vacate the apartment pursuant to the provisions of this Law and whose housing needs are not otherwise met, shall be provided with accommodation in accordance with the ZOSO by the administrative body on the territory of which she/he had his/her latest domicile or residence. The temporary user shall be obliged to move out of the apartment within the deadline set in Article 7 of this Law.

Within thirty days of a Decision under Article 6 of this Law which concerns an apartment inhabited by a new

occupancy right holder on the basis of a decision of the allocation right holder, or of a contract (hereinafter: the current occupant), the allocation right holder shall refer the case to the responsible cantonal administrative authority which shall pass a decision on allocation of another apartment to the current occupant or the occupancy right holder, within 30 days from the date the case has been submitted.

If the responsible cantonal authority decides that the occupancy right holder should be allocated another apartment, the decision shall be made in accordance with the criteria which must comply with Article 1. of Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina, in accordance with the European Convention of Human Rights and its Protocols, as well as the Law on Housing Relations. These criteria shall be developed by the Federation Ministry of Urban Planning and Environment, in consultation with organizations competent for the implementation of the standards mentioned in this Paragraph.

In all cases in which the current occupant remains in the apartment, all moveable property of the occupancy right holder found in the apartment must be returned to him/her upon his/her request.

In no event shall the failure of the cantonal authorities or of an allocation right holder to meet their obligations under this Article, or the failure of the current occupancy right holder to accept an apartment, operate to delay the ability of an occupancy right holder to reclaim the apartment.

## II. THE PROCEDURE FOR REPOSSESSION OF AN APARTMENT AND THE RIGHTS OF THE OCCUPANCY RIGHT HOLDER

### Article 4

The occupancy right holder as defined in Article 3, Paragraph 1 of this Law shall be entitled to claim the repossession of an apartment.

A claim for repossession of an apartment shall be presented to the municipal administrative authority competent for housing affairs, unless otherwise determined by cantonal law.

The claim shall be submitted in writing signed by the occupancy right holder or orally, in person by the occupancy right holder or an authorized representative.

A claim should include:

1. information on the apartment;
2. any evidence that the claimant is the holder of an occupancy right or a member of the latter's household;
3. the date when the occupancy right holder intends to reoccupy the apartment, but not later than one year from the date of submitting the claim; and
4. information on the place of residence of the occupancy right holder and the members of the occupancy right holder's household at the time the claim is filed.

### Article 5

A claim for repossession of the apartment must be filed within six months from the date of the entry into force of this Law.

If the occupancy right holder does not file a claim within the time limit referred to in the previous paragraph, the occupancy right is cancelled.

### Article 6

Upon the receipt of a claim for return of the apartment to the occupancy right holder, the competent authority shall decide on the claim by a decision within 30 days from the date of receipt of the claim.

### Article 7

The decision referred to in the preceding Article by which the claim of the occupancy right holder is accepted, shall contain:

1. a decision confirming that the claimant is the holder of the occupancy right;
2. a decision on repossession of the apartment by the occupancy right holder if there is a temporary user in the apartment, or if the apartment is vacant or occupied without legal basis;
3. a decision on termination of the right of temporary use of the apartment, if there is a temporary user in the apartment;
4. a time limit for vacating the apartment by a temporary user or another person occupying the apartment;



5. a decision concerning whether the temporary user is entitled to accommodation in accordance with the ZOSO.

The deadline for vacating the apartment, referred to in Paragraph 1(4) of this Article may not be shorter than 90 days from the date of the issuance of the decision, nor longer than the day of intended return of the holder of occupancy right, and the day of intended return may not be earlier than 90 days from the date of submitting the claim.

In exceptional circumstances, the deadline referred to in Paragraph 2 of this Article may be extended to up to one year if the municipality or the allocation right holder responsible for providing alternative accommodation in accordance with Article 3 of this Law provides detailed documentation regarding its efforts to secure alternative accommodation to the cantonal administrative authority responsible for housing affairs, and the cantonal authority finds that there is a documented absence of available housing. In each individual case, the requirements of the European Convention on Human Rights and its Protocols must be met, and the occupancy right holder must be notified of the decision to extend the deadline and the basis for the decision 30 days before the deadline has expired.

#### Article 8

The competent administrative body shall deliver the decision within 5 days from the date of issuance of the decision to:

1. the occupancy right holder;
2. the occupant of the apartment ;
3. the allocation right holder.

Any appeal against a decision must be submitted to the cantonal ministry responsible for housing affairs within 15 days from the date of receipt of the decision.

An appeal shall not suspend the execution of the decision.

#### Article 9

The handing over of the apartment to the occupancy right holder shall be witnessed by an official of the competent authority. .

The handing over of the apartment and its contents shall be recorded in the minutes including, among other things, a detailed description of the current state of the apartment and its contents.

#### Article 10

Proceedings in the cases initiated by the claims referred to in Article 4 of this Law shall be considered urgent.

#### Article 11

If the person occupying the apartment fails to voluntarily comply with a decision ordering him/her to vacate the apartment, the competent administrative body shall employ compulsory enforcement in accordance with law.

The enforcement shall be carried out at the request of the occupancy right holder.

#### Article 12

The occupancy right shall terminate by the force of the law if the occupancy right holder fails, without good cause, to reoccupy the apartment within one year from the date when his right to return to the apartment has been established by a final decision.

The occupancy right holder is considered to have good cause not to reoccupy the apartment:

1. if s/he has requested the commencement of enforcement proceedings, but the apartment continues to be occupied by another party;
2. if s/he has been unable to return to the municipality in which the apartment is located due to a well-founded fear of persecution;
3. if the occupancy right holder was called up for military service;
4. if the occupancy right holder has been receiving medical treatment;
5. if the occupancy right holder is staying in a retirement house;
6. if the occupancy right holder has been convicted and is serving a prison sentence for this period;
7. if security measures are being applied to the occupancy right holder;
8. if the occupancy right holder and the members of his/her household are temporarily staying in an other place

- in the country or abroad on the bases stated in paragraph 1 of Article 48 of the ZOSO; or
9. if the apartment is the subject of an unresolved claim submitted to the Commission for Real Property Claims of Displaced Persons and Refugees.

In the cases referred to in Paragraph 1 of this Article, as long as these reasons last, the right of the occupancy right holder to use the apartment shall not terminate.

### Article 13

Upon the cancellation of an occupancy right under Articles 5 or 12 of this Law, the allocation right holder may allocate the apartment for use to the temporary occupant or to another party in accordance with the provisions of the ZOSO.

Where the apartment is allocated to another party under the paragraph 1 of this Article, the temporary occupant of the apartment must vacate the apartment within 60 days of being notified of the final decision on allocation of the apartment to another occupant.

## III. CLAIMS TO THE COMMISSION FOR REAL PROPERTY CLAIMS OF DISPLACED PERSONS AND REFUGEES

### Article 14

A party affected by a decision made under Article 7 may at any time file a claim with the Commission for Real Property Claims of Displaced Persons and Refugees (GFAP, Annex 7, hereinafter the Property Commission). In the event that such a claim is filed, all proceedings, including execution of decisions or orders, shall be stayed pending the final decision of the Property Commission.

A decision of the Property Commission is final and binding.

Following a decision of the Property Commission, the rights and obligations of the party referred to in Paragraph 1 of this Article shall be the same as if the decision of the Property Commission was a decision of the competent authorities made in accordance with this law.

## IV. PURCHASE OF APARTMENTS WHICH HAVE BEEN DECLARED ABANDONED

### Article 15

The occupancy right holder, whose contract on the use of the apartment was cancelled in the period between 30 April 1991 and the entry into force of this Law, on the basis of regulations referred to in Article 1 of this Law and Article 47 of the ZOSO, and whose apartment has been returned to him in line with this Law has the right to purchase the apartment in the sense of the Law on Sale of Apartments with Occupancy Right.

The occupancy right holder shall acquire the right to purchase after he has been using the apartment for a period of at least six months.

The occupancy right holder may not sell the apartment within 5 years from the day of the registration of his ownership right, and this shall be noted in the land books or other respective registers on rights in real property.

The prohibition of purchase of the apartment by the current holder of occupancy right shall last until the deadline for the former occupancy right holder to submit the claim for repossession of the apartment has expired, i.e. until the proceedings under this Law have been finalized.

## V. FINAL PROVISIONS

### Article 16

Contracts on the use of apartments declared abandoned in accordance with the regulations referred to in Article 1 (1) of this Law, as well as other decisions on allocation of apartment for use issued after 7 February 1998 are null and void.

Provision referred to in Paragraph 1 of this Article shall also apply to contracts on the use of apartment if they were concluded before 7 February 1998 but their beneficiary did not move into the apartment.

Any person who uses an apartment on the basis of a decision or contract referred to in Paragraph 1 of this Article shall be considered to occupy the apartment without legal basis.

### Article 17

The Federation Minister of Urban Planning and Environment shall pass an instruction on the application of Article 4 of this Law within 30 days from the date of the entry into force of this Law.

#### Article 18

The procedure for the return of apartments to the possession of the occupancy right holders determined by this law shall be carried out in accordance with the Law on General Administrative Procedure (“Official Gazette of FBiH” No. 2/98), unless otherwise stipulated by this law.

#### Article 19

This law shall enter into force on the day following its publication in the “Official Journal of the Federation of Bosnia and Herzegovina”.



## National Housing Rights Legislation



### Bosnia and Herzegovina

Law on the Sale of Apartments with Occupancy Rights (6 December 1997) (Bosnia and Herzegovina) <sup>(57)</sup>

#### I. GENERAL PROVISIONS

##### Article 1

This Law shall regulate conditions and method of sale of apartments with occupancy right together with the common parts and facilities of the building, as well as the method of determining the price of the apartment and cessation of occupancy right.

##### Article 2

Apartment and auxiliary premises shall be understood to mean premises or a set of premises as defined by provisions of the Law on Housing Relations ("Official Gazette of SR BiH" No: 14/84, 12/87 and 13/89 - hereinafter: the Law on Housing Relations).

##### Article 3

An apartment shall be purchased with the common parts and facilities of the building which serve to the building as a whole, together with the land under the building.

Common parts and facilities of the building are defined by provisions of the Law on Housing Relations.

Premises with occupancy right which are not considered as an apartment may also be subject to sale, if it is prescribed by regulations that they may be subject to transactions.

A garage shall also be subject to sale, if it makes a building unit with the apartment or if it was given to the occupant for use as an integral part of the apartment.

##### Article 4

For the purposes of this Law, the following shall not be considered as an apartment:

1. premises in buildings for accommodation of individual persons,
2. premises in buildings for temporary accommodation and
3. premises in administrative and business buildings.

##### Article 5

Provisions of this Law shall not be applied to sale of apartments:

1. which are located in buildings for which a procedure for demolition has been initiated,
2. which are intended for living while performing official duties,
3. which are located in business buildings used for the activities of state administration, Federal administration, judiciary, health care, transport and communications.

##### Article 6

Apartments owned by legal entities whose seats are in the territory of the Federation of Bosnia and Herzegovina (hereinafter: the Federation), and which are located in the territory of the states formed after the dissolution of the former SFRY, shall be sold in the manner regulated in the respective state and under conditions of reciprocity, unless otherwise regulated by an inter-state agreement.

A foreign citizen, under conditions stipulated by this Law, may purchase an apartment only if a citizen of Bosnia and Herzegovina is entitled to purchase an apartment in the respective state.

#### II. RIGHT TO BUY APARTMENT

##### Article 7

Any holder of occupancy right, except in the case referred to in Article 5 of this Law, may submit a written request for buying an apartment to the holder of the right to dispose with the apartment (hereinafter: the seller) and the seller

shall be obliged to sell it.

Request from paragraph 1 of this Article shall be submitted within two years from the day of the application of this Law, and contract on sale of the apartment (hereinafter: the contract) must be concluded within three months from the day the request for buying apartment has been submitted.

If the seller does not conclude the contract upon the request of the holder of occupancy right who wants to purchase the apartment within the deadline referred to in paragraph 2 of this Article, the buyer shall have the right to initiate judicial proceedings.

The court ruling shall replace the contract in its entirety. As an exception, the term for the conclusion of the contract concerning an apartment for which all facts relevant for the sale of the apartment were not established at the time the request for purchasing the apartment had to be submitted, shall be counted from the day of the establishment of these facts.

Facts relevant for the sale of an apartment shall be evaluated at the time of the conclusion of the contract.

#### Article 8

Occupancy right holder shall be considered to be the person to whom the apartment was allocated for use by the owner i.e. the allocation right holder of the apartment, and who had signed the contract on the use of the apartment or the person to whom the apartment was allocated by final and binding judicial decision, as well as the person to whom this right was recognised by the act of a competent body in accordance with the Law on Housing Relations.

#### Article 8a

The occupancy right holder over an apartment which was proclaimed as abandoned by special regulations applied at the territory of Federation Bosnia and Herzegovina during the period of 30 April 1991 to 4 April 1998, shall acquire the right to purchase the apartment in compliance with the provisions of this Law upon expiry of two year deadline after his/her reinstatement in the apartment.

In the decision-making procedure related to the claim for purchase of the apartment, the owner of the apartment shall be obliged to establish, on the basis of available documentation, whether the claimant is the occupancy right holder referred to in paragraph 1 of this Article.

A contract on sale of the apartment concluded in contravention of the provisions in paragraph 1 of this Article shall be null and void.

The occupancy right holder referred to in paragraph 1 of this Article may submit a claim for purchase of the apartment in accordance with Article 7, paragraph 1 of this Law, within a six months deadline of a day on which he acquired the right to purchase the apartment.

#### Article 9

Under conditions prescribed by this Law, the members of the close family household of the occupancy right holder may also buy an apartment, with the approval of or in case of death of the occupancy right holder.

Members of the close family household of the occupancy right holder shall be considered to be the persons referred to in the Law on Housing Relations.

#### Article 10

Under conditions prescribed by this Law the occupancy right holder, his/her spouse or a member of his/her close family household may purchase only one apartment.

Any contract concluded in violation of provision referred to in paragraph 1 of this Article shall be null and void.

#### Article 11

Spouses may buy an apartment together, and one of them may buy it only with the approval of the other one.

If co-tenants have the occupancy rights on one apartment, they shall buy the apartment together each the part on which he/she has the occupancy right, unless they agree otherwise.

As an exception from paragraph 2 of this Article, if one or more co-tenants do not submit the request for buying their parts of the apartment within the deadline referred to in Article 7 of this Law, other co-tenants shall have the right to buy the apartment.

Approval and agreement referred to in paragraphs 1 and 2 of this Article shall be given in the contract or in a separate document with certified signature.

In case the approval is not given, or the agreement is not reached, the decision shall be made in the judicial

proceedings.

#### Article 12

Apartments shall be sold by the seller from Article 7 (1) of this Law.

#### Article 13

Apartments whose seller is unknown shall be sold by the municipality.

#### Article 14

For the purposes of this Law, an apartment whose seller is unknown shall be understood to mean an apartment whose holder of the right of disposal is a legal entity which did not register its activities according to the current regulations, or which ceased to operate and its legal successor is unknown or not determined, or whose seat is unknown, and the occupancy right holder is not able to file the request for buying the apartment within the deadline prescribed by Article 7 (2) of this Law.

In case referred to in paragraph 1 of this Article the occupancy right holder shall submit the request to the competent service of the municipality in which the apartment is located.

After having completed the required procedure, the competent service of the municipality shall allow the occupancy right holder who fulfils the conditions prescribed by this Law to purchase the apartment, and shall conclude the contract within the deadline referred to in Article 7 of this Law.

#### Article 15

Apartments whose holders of the right of disposal were the former JNA and the SSNO (Federal Secretariat of National Defence) shall be sold by the Federation Ministry of Defence, in accordance with this Law.

An organisational unit of the Federation Ministry of Defence on the municipal level shall sell the apartments from paragraph 1 of this Article which are on the territory within its jurisdiction.

Apartments whose holders of the right of disposal were the bodies and organisations of former SFRY, with the exception of paragraphs 1 and 2 of this Article, shall be sold by the Cantonal Government on the territory of which the apartment is located.

Apartments which are owned by the bodies and organisations of Bosnia and Herzegovina shall be sold by the Government of the Federation of Bosnia and Herzegovina.

### III. PRICE OF AN APARTMENT

#### Article 16

The price of an apartment shall be defined by contract, depending on:

- the value of the apartment established in accordance with Article 18 of this Law;
- amount of funds of the occupancy right holder which he invested in the apartment;
- depreciation of the apartment;
- level of war damage which the occupancy right holder repaired, or which is to be repaired
- discounts recognised belonging to the purchaser.

#### Article 17

The price of the apartment shall be fixed on the basis of the value of the apartment as defined by Articles 18 to 21 of this Law and reductions as defined by Articles 21 to 24 of this Law, and shall be calculated in DM.

#### Article 18

The value of the apartment shall consist of the construction value of the apartment, corrected by apartment's location coefficient. The construction value of an apartment shall be 600 DM per m<sup>2</sup>.

Apartment's location coefficient shall be established by the competent Cantonal Government within the range from 0.80 to 1.20 depending on the area of the settlement where the apartment is located, infrastructure support to the settlement, floor and other relevant facts.

#### Article 19

Upon the request of the purchaser, the value of the apartment shall be reduced by the amount of personal funds

invested or which need to be invested in the apartment by the purchaser, as follows:

- non-refunded funds he/she invested as his/her own share for the purpose of acquiring occupancy rights;
- the funds not paid in the name of compensation for dispossessed property to the holder of occupancy rights for the purpose of acquiring occupancy rights;
- funds with which the holder of occupancy rights removed war damage.

The amount of invested funds shall be defined on the basis of documentation or the estimate of the expert witness of civil engineering profession.

The amount of invested or needed funds from paragraph 1, line 3 of this Article shall be recognised to the purchaser in the amount not exceeding 30 % of the construction value.

#### Article 20.

The value of an apartment defined on the basis of Articles 18 and 19 of this Law shall be reduced on the basis of depreciation at the rate of 1 % per year, and not more than up to 60 %.

The price of garage shall be defined in the manner from paragraph 1 of this Article, provided that the purchaser does not have the right to reductions, and that he shall be obliged to pay the price of garage in full even in case when the apartment is paid by instalments.

#### Article 21

The purchaser shall be given a personal reduction of price of the apartment determined in accordance with Article 20 of this Law, in the amount of 1 % per full year of service with domestic legal or physical persons, including years of service with legal and physical persons from the area of SFRY until 06 April 1992.

Reduction based on years of service of spouses defined in paragraph 1 of this Article shall be calculated cumulatively and up to 75 %.

The beneficiary of family pension who is a purchaser, shall also be recognised a reduction of price of the apartment based on the years of service of the deceased holder of occupancy right.

#### Article 22.

The purchaser of an apartment shall be recognised a reduction of price of the apartment determined in accordance with Article 21 of this Law, as follows:

- 0.25 % for every month spent in the RBiH Army, Croat Council of Defence or Police (hereinafter: the Armed Forces) and in National - Liberation War from 1941 until 1945;
- 0.12% for every month spent under a working duty and in the unit of Civil Protection during the state of war.

#### Article 23

Purchasers of apartments who are war victims shall be entitled to a special reduction of the value of the apartment determined in accordance with Articles 19 to 22 of this Law, as follows:

1. Discount of 100% when the apartment is purchased by:
  - a. minor child as well as by the child receiving full time education both parents of whose were killed in the home guard-defensive war or were killed as victims of the aggression,
  - b. person who is military or civil invalid of war with at least 90% of physical damage.
2. Discount of 75% when the apartment is purchased by:
  - a. person whose two or more members of the family household were killed as members of the Federation Armed Forces in the defensive liberation war or were killed as victims of that aggression.
  - b. the holder of occupancy right whose spouse was killed in the home guard- defensive liberation war as a member of the Armed Forces or was killed as a victim in that aggression if he/she lives in a family household with a pre-school (a child or an adopted child) receiving full time education or with a child (an adopted child) who is the holder of the family property. In that case the apartment shall be jointly owned by the spouse and the child (adopted child).
3. Discount of 50% when the apartment is purchased by:
  - a. holder of occupancy right whose spouse was killed in home guard-defensive liberation war or was killed as a victim in that aggression,

- b. military invalid or a civil invalid of war with 60 % to 90 % of physical damage,
  - c. a parent whose child with who the parent lived in a family household was killed in the home guard-defensive, liberation war or was killed as a victim in that aggression.
4. Discount of 25 % when the apartment is purchased by:
- a. military or civil invalids of war with 20 % to 60 % of physical damage.
  - b. camp inmates and political prisoners who were in camps or prisons respectively during the aggression on Bosnia and Herzegovina for at least 12 months, which shall be proved by a credible documentation.

Military and civil war invalids of certain categories from this Article shall be considered persons to who that property is recognised on the basis of a separate law.

War invalids and other invalids who do not belong to the category of invalids defined in paragraphs I-4 of this Article shall be entitled to a discount in the amount of an appropriate category of invalidity from this Article deduced by 20%.

#### IV. FUNDS AND WAYS OF PAYING THE PRICE OF APARTMENT

##### Article 24

Payment of purchase price of the apartment shall be done by one of the means of payment, as follows:

- cash,
- certificates based on citizen's claims, regulated by special regulations.

In case of cash payment, the price of an apartment shall be reduced by 20% of the determined purchase price.

##### Article 25

Cash payment of the price of the apartment may be agreed to be in full or by instalments, according to the choice of purchaser. If the payment is agreed to be in full, the payment deadline may not be longer than 30 days from the day of entering into the contract.

##### Article 26

The deadline for payment by instalments may not exceed 25 years, and shall be paid in 25 equal annual instalments with 1% annual interest. The Cantonal Government may prescribe a shorter period for payment by instalments, with a smaller interest rate.

##### Article 26a

If a buyer, after a certain number of instalment payment of the apartment price, settles for cash payment, the price he pays is decreased for interest rate that is accounted at the rate of 2% a year on instalments paid in advance, from Article 26 of this Law, calculated according to the method of interest calculations for a consumption loan.

#### V. REGISTRATION OF APARTMENT OWNERSHIP RIGHTS

##### Article 27

The ownership right to an apartment shall be acquired upon the registration in the Land Register.

If the purchaser contracted the payment in instalments the right to register the ownership in the Land Register shall be acquired upon the day of the payment of the first instalment, provided that the apartment may not be sold or disposed of in legal transactions with living persons until the day of the payment of the last instalment.

If a real property is not registered in the Land Register, the ownership right to the apartment shall be acquired upon submission of the contract to the Land Registry Service of the Court in whose jurisdiction the apartment is located and upon the registration in the record of submitted contracts held in the Court.

The way of setting up and keeping the submitted contracts record shall be regulated by a separate cantonal regulation.

##### Article 28

When the apartment is used by the families of dead soldiers, disabled war veterans, demobilised soldiers and expelled persons on the basis of a legal title, the purchaser of the apartment may establish a lease relation with that person, under conditions prescribed by a separate law regulating the lease of apartments. The lease relation from



paragraph 1 of this Article may not last longer than 3 years.

#### Article 29

The seller shall be obliged to submit for approval the contract on the sale of the apartment to the competent Public Attorney within 30 days from the day of entering into the contract.

If the Public Attorney finds that the agreed price of the apartment was not determined in accordance with the provisions of this Law, he/she shall invite the parties to amend the contract and thus bring the apartment price into compliance with the provisions of this law within 30 days from the day of receipt of the contract.

If the parties fail to comply, the Public Attorney shall file an action for the cancellation of the contract within 60 days from the day of the submission of the contract.

#### Article 30

The contracting parties shall be obliged to certify their signatures. The body competent for the certification of signatures shall certify the signatures of the parties upon the finding that the contract was submitted for approval to the competent Attorney General, which is to be confirmed on the back of the contract.

#### Article 31

The contract on the sale of the apartment by instalment payments must contain the purchaser's statement authorising the registration of mortgage on the purchased apartment on behalf of the seller, in the amount of the price and interest.

#### Article 32

The mortgage shall become valid upon the registration in the Land Register.

In the area for which land records are not kept the mortgage shall become valid upon the registration in the Book of Title Deeds or other book in which the mortgage on real property is registered.

When the court receives the request for registration, i.e. the registration of apartment ownership, it shall register ex officio the mortgage on behalf of the seller in the full amount of the price and interest.

#### Article 33

Occupancy right of the apartment of the holder thereof shall terminate on the day of entering into the apartment sales contract.

#### Article 34

Contract on the sale of the apartment concluded under the conditions prescribed by this law shall not be subject to sales taxation.

### VI. THE MANNER OF DISTRIBUTION OF FUNDS

#### Article 35

Income realised from the sale of apartments referred to in Article 13 of this Law shall be included in the municipal budget.

#### Article 36

Income realised from the sale of apartments referred to in Article 15 of this Law shall be allocated as follows:

- 80% to the cantons
- 20% to the Federation.

#### Article 37

Income realised from the sale of apartments referred to in Article 12 of this Law shall be allocated as follows:

- 90% of income to the enterprise or other legal entity for the purpose of giving credits under favourable conditions for purchasing apartments for their workers. If the enterprise or other legal entity does not need crediting under favourable conditions for purchasing apartments for their workers, the income from the preceding paragraph may be used for its development.
- 10% of income to the enterprise or other legal entity for the payment of costs caused by the sale of apartments.

Income realised from the sale of apartments referred to in paragraph 1, line I, of this Article shall be used by the enterprise for the given purposes until the day of approval of the privatisation programme by the competent privatisation agency.

Once the privatisation programme is approved to the enterprise, further instalment payments collected from the sale of apartments referred to in paragraph 1, line 1, of this Article shall be paid into the budget of the municipality and the town on the territory of which the apartment is located and shall be used for the development of the communal infrastructure.

#### Article 38

Entities realising income from the sale of apartments in accordance with Articles 36, 37 and 38 of this Law, shall allocate 70% of income to the cantonal fund for construction of apartments for family members of killed soldiers, disabled war veterans, demobilised soldiers and expelled persons.

The rights and liabilities of the cantonal funds for building the apartments will be determined by separate cantonal regulations.

#### Article 39

When concluding a contract on the sale of apartments under provisions of this Law, an occupancy right holder who concluded a contract on the purchase of the apartment on the basis of the Law on Security in JNA and the Law on Amendments to the Law on Rights and Obligations of the Federal Bodies Regarding Socially Owned Assets Used by Them (Official Gazette of the SFRY, No 84/90) shall be recognised the amount paid, calculated in DEM at the exchange rates valid on the day of the payment.

#### Article 39a

If the occupancy right holder of an apartment at the disposal of the Federation Ministry of Defence uses the apartment legally and s/he entered into a legally binding contract on purchase of the apartment with the SSNO before 6 April 1992 in accordance with the Law referred to in Article 39 of this Law, the Federation Ministry of Defence shall issue an order for the registration of the occupancy right holder as the owner of the apartment with the responsible court.

#### Article 39b

In the event that the occupancy right holder referred to in Article 39a of this Law did not effect the payment of the total amount of the sale price of the apartment in accordance with the sale contract, s/he shall pay the reminder of the amount specified in that contract to the Ministry of Defence of the Federation.

If the contract provided for the payment of the sale price in instalments, an annex to the contract shall be made regulating the payment of the remaining instalments and the creation and registration of a mortgage in accordance with this Law.

The provisions of Articles 39a of this Law and paragraph 1 and 2 of this Article shall also be applied to contracts on the purchase of apartments concluded before 6 April 1992, in cases where the verification of signatures has not been done before the responsible court.

#### Article 39c

The provisions of Articles 39a and 39b shall also be applicable to an occupancy right holder who has exercised the right to repossess the apartment pursuant to the provisions of the Law on the Cessation of Application of the Law on Abandoned Apartments ("Official Gazette of the FbiH", 11/98 and 18/99).

#### Article 39d

Person who does not realise his/her right under this Law with the Federation Ministry of Defence, may initiate a proceedings before the responsible court.

#### Article 39e

The occupancy right holder who is not entitled to the repossession of the apartment or does not submit a claim for the repossession of the apartment in accordance with the provisions of Article 3 and 3a of the Law on the Cessation of Application of the Law on Abandoned Apartments and who entered into a legally binding contract on the purchase of apartment with the SSNO before 6 April 1992, shall have the right to submit a request to the Federation Ministry of Defence for compensation of the funds paid on that basis, unless it is proved that these funds were acknowledged for purchase of an apartment outside the territory of Bosnia and Herzegovina.

## VII. SPECIAL PROVISIONS

#### Article 40

Legal status of apartments which are under construction and the manner of their privatisation shall be regulated by a special regulation to be passed by the competent Cantonal body.

For the purposes of this Law, the apartment under construction shall be understood to mean every newly built apartment on which a technical inspection has not been done and a positive statement on use of the apartment has not been given.

When passing this regulation, the competent Cantonal body shall consider the rights of an investor (contractor), level of construction, as well as other circumstances relevant for a fair solution.

#### Article 41

Upon a request of the seller or the purchaser, the responsible body which keeps the records on apartments shall be obliged to provide access to data relevant for the sale of the apartment.

#### Article 42

Maintenance of common parts of the building in which the apartments have been sold, as well as renting of the apartments for which the holders of the occupancy right have not submitted a request for sale, shall be regulated by a special Cantonal regulation.

### VIII. PENALTY PROVISIONS

#### Article 43

Legal entity - the seller of the apartment shall be fined for an offence by the amount from 1.000 KM to 10.000 KM :

1. if s/he does not act in accordance with the provision of Article 7 of this Law;
2. if s/he acts opposite to the provisions of Article 8a of this Law;
3. if he determines the price of the apartment in contravention of the provisions of Article 18 to 25 of this Law;
4. if he does not act in accordance with the provision of Article 29, paragraph 1 of this Law;
5. if he uses means acquired by sale of apartments for purposes which are opposite to provisions of Articles 35 to 38 of this Law. A responsible person within legal entity shall be fined for the offence referred to in paragraph 1 of this Article, by the amount from 500 KM to 1.000 KM.

#### Article 44

A responsible person within the competent body which keeps the record on apartments shall be formed for an offence by the amount from 500 KM to 1.000 KM if he does not act in accordance with provisions of Article 41 of this Law.

#### Article 45

Until the KM becomes operational, the fines foreseen in Articles 43 and 44 of this Law may be paid in DM or the same amount denominated in other currencies used in payment operations in the Federation of Bosnia and Herzegovina, at the average rate published by the competent financial institution on the date of payment.

### IX. FINAL AND INTERIM PROVISIONS

#### Article 46

Contracts on the use of apartment which were concluded under the Law on Housing Relations by the day of the entry into force of this Law, shall cease to be valid at latest within three years from the date of the entry into force of this Law.

Persons who acquired the occupancy right or the legal title to lawfully occupy the apartment in accordance with provisions of the Law on Housing Relations, by the expiry of the deadline referred to in Article 50 of this Law, shall have the right to purchase the apartment in accordance with the provisions of this Law.

#### Article 47

Provisions of this Law shall not be applied to the sale of privately owned apartments which have not been subject to nationalisation, on which the occupancy right has been acquired. Sale of apartments which are subject to restitution shall be regulated by a separate regulation on restitution.

#### Article 48

The residential building and apartments in the building which have been damaged during the war can not be subject to sale, if they do not provide permanent fitness, usability and safety of all basic parts of the building as a whole which are being used by all users of the building.

After having concluded the required procedure, the fitness of the building referred to in paragraph 1 of this Article, shall be determined by the administrative municipal body responsible for urban planning and civil engineering affairs.

#### Article 49

Cantonal Governments shall pass regulations referred to in Articles 18, 26 and 27 of this Law within 15 days from the date of the entry into force of this Law.

#### Article 50

Cantonal Assemblies shall pass regulations referred to in Articles 40 and 42 of this Law within two years from the date of the entry into force of this Law.

#### Article 51

This Law shall enter into force on the eight day of its publishing in the “Official Gazette of the Federation of Bosnia and Herzegovina” and shall be applied upon the expiration of 90 days after its entry into force.



## National Housing Rights Legislation



### Bosnia and Herzegovina

Law on the Cessation of the Application of the Law on Abandoned Apartments (2 December 1998) (Republika Srpska) <sup>(58)</sup>

#### I. GENERAL PROVISIONS

##### Article 1

The Law on Use of Abandoned Property (Official Gazette of RS, Nos. 3/96 and 21/96) shall cease to be in force, as well as the regulations passed there under and other regulations regulating the issues of abandoned property and apartments passed between 30 April 1991 and the entry into force of this Law.

##### Article 2

All administrative, judicial, and any other decisions enacted on the basis of the regulations referred to in Article 1 of this Law in which rights of temporary occupancy have been created shall remain effective until cancelled in accordance with this Law.

All administrative, judicial, and any other decisions enacted on the basis of the regulations referred to in Article 1 of this Law in which new occupancy rights have been created shall be treated as acts granting rights of temporary occupancy until cancelled in accordance with this Law.

All administrative, judicial and any other acts and any other disposals of real estate and apartments, enacted on the basis of the regulations referred to in Article 1 of this Law shall cease to be effective after a claim has been filed by the authorised claimant.

#### II. RETURN OF PROPERTY TO PRIVATE OWNERS, POSSESSORS OR USERS

##### Article 3

The owner, possessor or user of the real property who abandoned the property shall have the right to repossess the real property with all the rights which s/he had before 30 April 1991 or before the real property became abandoned.

##### Article 4

For the purpose of this Law, the owner, possessor or user shall be understood to mean the person who was the owner, possessor or user of the real property under the applicable legislation at the time when the real property became abandoned.

##### Article 5

A user to whom the real property was allocated for temporary use pursuant to the Law on the Use of Abandoned Property (hereinafter referred as: the temporary user) may continue to use the real property under the conditions and in the manner as provided by the Law on the Use of Abandoned Property until a decision referred to in Article 11 of this Law has been issued.

##### Article 6

If the temporary user who is required to vacate the property pursuant to the provisions of this Law cannot or does not wish to return to the apartment in which s/he lived before 30 April 1991 and who has not been provided with another apartment meeting the conditions of appropriate accommodation, the responsible body of the Ministry of Refugees and Displaced Persons on the territory of which s/he had his/her last domicile or residence shall provide him/her with appropriate accommodation within the deadline set in the decision ordering him/her to move out.

If the temporary user referred to in Paragraph 1 of this Article presents evidence that s/he submitted a claim for repossession of his/her property, s/he may not be evicted by force until s/he is enabled to return or freely dispose of his/her property, in line with Annex 7 of the General Framework Peace Agreement for Bosnia and Herzegovina or until an alternative accommodation has been provided in another way within one year.

If the request of the temporary user and free disposal of his/her property has been resolved, in no event shall failure of the responsible body to meet its obligations under paragraph 1 of this Article operate to delay the ability of the owner, possessor or user to enter into possession of his/her property.

The body responsible for the provision of accommodation shall not be obliged to provide an accommodation to a

person using the apartment without valid legal basis.

#### Article 7

The owner, possessor or user of abandoned real property, or his/her authorised representative, shall have the right to file a claim at any time for the repossession or disposal in another way of his/her abandoned property.

The right of the owner to file a claim shall not become obsolete.

#### Article 8

A claim under Article 7 of this Law may be filed by the owner, possessor or user of abandoned real property with the responsible body of the Minister of Refugees and Displaced Persons in the municipality on the territory of which the real property is located.

Claims may be made in writing signed by the claimant or an authorised representative, or orally by the claimant or an authorised representative. Claims made in writing may be submitted in person, by mail or by any other person. No power of attorney is required for another person to submit a claim signed by the claimant.

A claim should include:

1. information on the owner, possessor or user;
2. all necessary information on the real property;
3. any evidence possessed by the claimant indicating that the claimant is the owner, possessor or user of the real property;
4. the date when the claimant intends to repossess the real property.

The responsible body shall accept claims regardless of whether or not supporting documentation is supplied by the claimant. In the event that the claimant cannot provide the necessary supporting documentation, the responsible body shall check the records of the relevant court or administrative body and any other available documentation to confirm the rights of the claimant.

The responsible body shall accept any identification document issued by the state of Bosnia and Herzegovina or any administrative body in either Entity, and any other document which shows the claimant's identity, and shall use any options provided in the Law on General Administrative Proceedings in the identification process.

The claimant shall be fully released from taxation, as well as from other expenses of the proceedings as provided in Articles 113 through 119 of the Law on General Administrative Proceedings ("The SFRY Official Gazette", No. 47/86, "The RS Official Gazette", No. 1/94, Special Issue 10/95).

#### Article 9

The responsible body of the Ministry of Refugees and Displaced Persons shall be obliged to issue a decision to the claimant within 30 days from the date of receipt of the claim for repossession of real property.

#### Article 10

The proceedings to return the real property to the owner, possessor or user shall be carried out in accordance with the provisions of the Law on General Administrative Proceedings, unless this Law provides otherwise. The procedure until the issuance of the decision shall be carried out as an expedited procedure.

#### Article 11

The decision on return of the real property to the owner, possessor or user shall contain the following:

- information on the owner, possessor or user to whom the real property is returned,
- information on the real property subject to return,
- the time limit within which the real property will be returned or put at disposal of the owner, possessor or user,
- a decision whether the temporary user is entitled to appropriate accommodation,
- a decision terminating the right of the temporary user to use the real property as of the date of the intended return of the claimant,
- the time limit for the temporary user to vacate the property, or for handing over of the land.

The decision under Paragraph 1 of this Article may not set a time limit for the temporary user to vacate the property shorter than 90 days from the date of the issuance of the decision, nor longer than the date of the intended return of the owner, possessor or user, but the day of the intended return may not be earlier than 90 days from the date of

submitting the claim.

The claimant may reoccupy property that is not in possession of a temporary user immediately on receipt of the decision.

In exceptional circumstances, the deadline referred to above may be extended by up to one year if the body responsible for providing another accommodation in accordance with Article 6 of this Law provides detailed documentation regarding the lack of available accommodation to the Ministry of Refugees and Displaced Persons.

In case of the return of arable land into possession, the time limit for its handing over may be extended, as an exception, until the harvest is collected.

#### Article 12

The responsible body of the Ministry of Refugees and Displaced Persons shall submit its decision to the claimant requesting the repossession of the property and the temporary user of the property.

#### Article 13

The party to whom the decision under Article 11 of this Law is referred may at any time initiate proceedings before the Commission for Real Property Claims of Displaced Persons and Refugees (Annex 7 to the General Framework Agreement of Peace in Bosnia and Herzegovina, hereinafter referred to as the Commission).

In case that the proceedings under Paragraph 1 of this Article have been initiated, all other proceedings carried out before the competent bodies, including the procedure to enforce the decision referred to in Article 11 of this Law, shall be stayed pending the final decision of the Commission.

A decision of the Commission shall be final and binding.

In the light of specifying the rights and obligations of the party referred to in Paragraph 1 of this Article, the decision of the Commission shall have the same legal force as the decision of any other responsible body issued in accordance with this Law.

A decision of the Commission shall be enforced by the competent bodies of the Republika Srpska.

### III. RETURN OF APARTMENTS TO THE HOLDERS OF OCCUPANCY RIGHT

#### Article 14

The occupancy right holder of an abandoned apartment shall have the right to return to the apartment in accordance with Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina.

Persons who have left their apartments after 30 April 1991, are presumed to be refugees and displaced persons under Annex 7, unless it is established that they left their apartments for reasons wholly unrelated to the conflict.

#### Article 15

The occupancy right holder referred to in Article 14 of this Law shall be entitled to file a claim for repossession of the apartment.

A claim for repossession of the apartment shall be filed with the responsible body of the Ministry of Refugees and Displaced Persons in the municipality in which the apartment is located.

A claim for repossession of the apartment should include:

- information on the claimant;
- information on the apartment;
- evidence that the claimant is the occupancy right holder or a member of the latter's family household;
- the date when the claimant intends to reoccupy the apartment, but not later than one year from the date of submitting the claim;
- information on the residence of the occupancy right holder and members of his/her household at the time when the claim is submitted.

If the temporary user of the apartment presents evidence that s/he submitted a claim for return of his/her occupancy right, s/he shall not be evicted by force from the apartment allocated to him/her for temporary use until s/he is enabled to freely dispose of his/her apartment, or until an appropriate accommodation has been provided in another way within one year.

The responsible body shall accept all claims with or without the appropriate documents enclosed by the claimant. In cases when the claimant is not able to provide the necessary relevant documents, the responsible body shall verify

the evidence, as well as other available documents, with the allocation right holder, the appropriate court or administrative body in order to have the rights of the claimant confirmed.

The responsible body shall accept any identification document issued by the state of Bosnia and Herzegovina or any legal body in either Entity, as well as any other document confirming the identity of the claimant.

The claimant shall be fully exempted from taxation as well as from other expenses of the proceedings, as provided in Articles 113 through 119 of the Law on General Administrative Proceedings.

#### Article 16

A claim for repossession of the apartment may be filed within 6 months from the date of entry into force of this Law.

If the occupancy right holder does not file a claim within the time limit referred to in the previous paragraph, his/her occupancy right shall be cancelled.

#### Article 17

The responsible body of the Ministry of Refugees and Displaced Persons shall decide on the claim for the repossession of the apartment by the occupancy right holder within 30 days from the date of receipt of the claim.

The allocation right holder shall refer the case to the responsible municipal or city administrative body within 30 days from the issuance of the decision referred to in the Article above which relates to the apartment occupied by the new occupancy right holder based on an act issued by the allocation right holder, i.e. contract (hereinafter: the current user). The responsible municipal or city administrative body shall then pass a decision on the allocation of another apartment to the current user or occupancy right holder within a deadline which cannot be longer than the deadlines referred to in Article 18 of this Law.

If the responsible municipal body has decided to allocate another apartment to the occupancy right holder, this Decision shall have to be passed in accordance with the criteria which must be harmonised with Article 1 Annex 7 of the General Framework Agreement in line with the European Convention on Human Rights and with other regulations of the Republika Srpska.

#### Article 18

The decision on repossession of the apartment by the occupancy right holder shall contain:

- a decision confirming that the claimant is the occupancy right holder;
- a decision on repossession of the apartment by the occupancy right holder if there is a temporary user in the apartment, or if the apartment is vacant or occupied without legal basis;
- a decision on termination of the right of temporary use of the apartment if there is a temporary user of the apartment;
- a time limit for vacating the apartment by a temporary user or another person in possession of the apartment;
- a decision concerning whether the temporary user is entitled to accommodation in accordance with the ZOSO.

The time limit for vacating the apartment referred to in Paragraph 1(4) of this Article may not be shorter than 90 days from the date of the issuance of the decision, nor longer than the day of the intended return of the holder of the occupancy right, but the day of the intended return may not be earlier than 90 days from the date of submitting the claim.

The occupancy right holder may reoccupy an apartment that is vacant immediately on receipt of the decision, unless the apartment is in possession of a temporary user in accordance with this Law.

In exceptional circumstances, the deadline referred to in Paragraph 2 of this Article may be extended by up to one year if the body responsible for providing alternative accommodation on the territory of which the temporary user of the apartment had the last domicile or residence provides detailed documentation regarding the lack of available housing for provision of appropriate accommodation the Ministry for Refugees and Displaced Persons.

In each individual case, the requirements of the European Convention on Human Rights and its Protocols must be met, and the occupancy right holder shall be notified of the decision to extend the deadline and the basis for the decision 30 days before the deadline has expired.

#### Article 19

The responsible body shall deliver the decision referred to in Article 18 of this Law within 8 days from the date of issuance of the decision to:

- the occupancy right holder;



- the user of the apartment;
- the allocation right holder.

#### Article 20

The proceedings to return the apartment to the occupancy right holder shall be carried out in accordance with the provisions of the Law on General Administrative Proceedings, unless this Law provides otherwise.

#### Article 21

The occupancy right to the apartment shall cease in case the occupancy right holder fails to reoccupy the apartment without a justified cause, within one year from the day when the decision becomes final.

The reason for which the occupancy right holder failed to commence to use the apartment shall be deemed justified:

- if the occupancy right holder has initiated an enforcement procedure, while the other party continues to occupy that apartment;
- if the occupancy right holder is unable to return to the municipality where the apartment is located for the reason of his/her justified fear of persecution;
- if the occupancy right holder has been drafted into the army;
- if the occupancy right holder is admitted to medical care;
- if the occupancy right holder is in the old peoples' home, disabled peoples' home, pensioners' home, etc.
- if the occupancy right holder is serving a prison sentence during the period of imprisonment sentence;
- if a certain security measure is being taken against the occupancy right holder;
- if the occupancy right holder and members of her/his family household temporarily reside in a different place within the country or abroad for the reasons mentioned in Paragraph 1 of Article 48 of the ZOSO; or
- if an apartment is the subject of the claim submitted to the Commission for the Real Property Claims of the Displaced Persons and Refugees.

The occupancy right holder's right to use the apartment shall not cease in the cases referred to in the previous paragraph.

#### Article 22

Upon the cancellation of the occupancy right under Articles 16 and 21 of this Law, the allocation right holder may allocate the apartment for use to the temporary user or another person in accordance with the provisions of the ZOSO.

If the temporary user has been issued a decision by the Ministry of Refugees and Displaced Persons, s/he shall stay in possession of such an apartment until he is provided with another appropriate accommodation.

#### Article 23

The party referred to in the decision under Article 18 of this Law may initiate at any time proceedings before the Commission for Real Property Claims of Displaced Persons and Refugees (Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina, hereafter: the Commission).

In case that such proceedings have been initiated, all other proceedings carried out before the competent bodies, including the procedure to enforce the decision, shall be stayed pending the final decision of the Commission.

A decision of the Commission shall be final and binding.

In the light of specifying the rights and obligations of the party referred to in Paragraph 1 of this Article, the decision of the Commission shall have the same legal force as the decision of any other responsible body issued in accordance with this Law.

A decision of the Commission shall be enforced by the competent body of Republika Srpska.

### IV - SPECIAL PROVISIONS

#### Article 24

The repossession of abandoned real property or the apartment by the owner, user or occupancy right holder shall be witnessed by an official and interested parties.

A report shall be made on the return of the real property or apartment and on the reinstatement of the owner or user into possession of the property or apartment. The report shall contain a detailed description of the real property under the process of return.

#### Article 25

The provisions of this Law shall also apply to the abandoned real property the ownership of which has been acquired after 30 April 1991 under any title on sale of real property (contracts on exchange, purchase, gift, etc.)

#### Article 26

The provisions of this Law regulating the manner of repossession of the real property or apartment by the owner, possessor or user shall also apply regarding repossession of the real property allocated to temporary users on the basis of rationalisation (excess housing space).

#### Article 27

A decision on repossession of real property may be appealed with the Ministry of Refugees and Displaced Persons within 15 days from the date of the receipt of the decision.

#### Article 28

The conditions for and the manner of the purchase of an apartment for the occupancy right holders to whom the apartments have been returned in accordance with this Law shall be regulated by a separate law.

#### Article 29

The Minister of Refugees and Displaced Persons shall pass an instruction on the application of Articles 8 through 11 and Articles 15 through 18 of this Law within 30 days from the date of the entry into force of this Law.

#### Article 30

This Law shall enter into force on the 8th day after its publication in the Official Gazette of the Republika Srpska.



## National Housing Rights Legislation



### **Bulgaria**

#### Restitution of Ownership of Nationalised Real Property Act of 1992

[Owners reinstated under the Restitution of Ownership of Nationalised Real Property Act (promulgated, SG No. 15/1992; amended, No. 28/1992) may claim their property right before the authority under Article 3 of the Transformation and Privatisation of State-Owned and Municipal Enterprises Act. However, such owners must make such a claim not later than two months after the publication of the decision to privatise the enterprise whereof their property is part, otherwise they shall only have the right to compensation.]



## National Housing Rights Legislation



### **Czech Republic**

Law No. 116/1994 Coll.

[Law No. 116/1994 Coll. amends Law No. 87/1991 Coll. on out-of-court rehabilitation, as amended. Under this law, dealing specifically with agricultural land and property, entitled persons defined in section 4 were compensated, above all by the return of real estate (sect. 6), compensation for buildings which could not be yielded up (sect. 14) and compensation for animate and inanimate chattels (sect. 20).]



## National Housing Rights Legislation



### **Czech Republic**

Law No. 87/1991 Coll.

[On 2 February 1991, the Czech and Slovak Federal Government adopted Act 87/1991, which entered into force on 1 April 1991. It endorses the rehabilitation of Czech citizens who had left the country under communist pressure and lays down the conditions for restitution or compensation for loss of property. Under Section 3, subsection 1, of the Act, those who had their property turned into State ownership in the cases specified in Section 6 of the Act are entitled to restitution, but only if they are citizens of the Czech and Slovak Federal Republic and are permanent residents in its territory.

Under Section 5, subsection 1, of the Act, anyone currently in (illegal) possession of the property shall restate it to the rightful owner, upon a written request from the latter, who must also prove his or her claim to the property and demonstrate how the property was turned over to the State. Under subsection 2, the request for restitution must be submitted to the individual in possession of the property, within six months of the entry into force of the Act. If the person in possession of the property does not comply with the request, the rightful owner may submit his or her claim to the competent tribunal, within one year of the date of entry into force of the Act (subsection 4).]

NOTE: The Constitutional Court of the Czech Republic reached a decision on 12 July 1994 and issued a Finding that eliminates the requirement of permanent residence as a condition to exercise the right to claim property seized by the Communist government of Czechoslovakia during the period between 25 February 1948 and 31 December 1989. The requirement for the claimant to hold Czech citizenship, however, remains valid.



## National Housing Rights Legislation



### Estonia

#### Law on the Fundamentals of Ownership Reform of 1991, as amended in 1993 and Land Reform Act of 1991, as amended in 1993

[Stipulates that the principal process of ownership reform will be the extensive restitution and compensation of unlawfully expropriated properties to their former owners or their heirs. Unlawful expropriation, according to the Acts, is interpreted rather broadly. Subject to restitution or compensation is unlawfully nationalized property, property collectivised and property expropriated in the course of unlawful repressions (as well as property abandoned due to the genuine danger of repression) during the period from June 16, 1940 until June 1, 1981. Restitution concerns a large number of buildings that are actually occupied by tenants (other than the former owner). In order to avoid social tensions, the restitution of such dwellings requires the former owner (or inheritor) to continue the rental contract with the present tenant for at least 3 years after the restitution (unless the tenant and former owner do not reach another agreement). Eligible persons entitled to claim restitution or compensation for property is rather broad and includes:

- 1) former owners if they lived permanently on the territory of Estonia in June 1991, or if they were citizens of the Republic of Estonia on June 16, 1940 (i.e. including present foreign residents);
- 2) heirs of the former owner. If there are none, the parents, spouse and children of the previous owner in equal shares, the spouse of the child of the previous owner, should the child of the previous owner be deceased; the grandchildren of the previous owner and other descendants, should their parent be deceased;
- 3) public and religious organizations, which operated until June 16, 1940, and whose statutory activity has not been terminated.]



## National Housing Rights Legislation



### Germany

#### German Act Regulating Unresolved Property of 1990

[The German Act Regulating Unresolved Property regulates unresolved issues of property and assets within the area of the former German Democratic Republic. The Act establishes a framework for the return of assets taken from individuals and associations between 30 January 1933 and 1990. In cases where restitution is not possible, compensation will be made for the loss of property in eastern Germany.]



## National Housing Rights Legislation



### Germany

#### Federal Restitution Law of 1957

[Under the Federal Restitution Law of 1957, property remaining in Germany that had belonged to victims of racial and political persecution was returned to its former owners, and, in cases where owners had perished, to heirs or successor organizations, specifically the Jewish Claims Conference. For objects that no longer existed and thus could not be returned, compensation and indemnification were paid.]





## National Housing Rights Legislation



### Rwanda

#### Ministerial Order No. 01/96 of September 23, 1996 Regarding the Temporary Management of Land Property

#### Chapter One: Preliminary Provisions

##### Article 1:

The Commune is bestowed with full authority to ensure on behalf of the government the management of all the land property in rural areas of their jurisdiction that have been abandoned by their owners.

##### Article 2:

Within the framework of the present order, portions of land in rural areas are those that are not located in boundary limits of towns as determined by the decree of April 20, 1979.

The present order concerns land property that is not registered in official documents and has been abandoned by its owners. It does not concern all the land in rural areas which has been registered (in cadastre) or any other land that is normally counted in Government property and has never been allocated (left overs, swamps, military fields, research fields, etc.).

##### Article 3:

Shall be considered as abandoned property:

1. Any land whose owner died without leaving behind his legitimate wife or children;
2. Any land whose owner, his legitimate wife and children are out of the country.

#### Chapter V: Modalities for the Land Owner to be Reinstated in His Rights

##### Article 23:

The land owner, his legitimate wife and children have the full right to have their property returned upon their repatriation.

They shall submit their request to the Bourgmestre where the property is located.

The Bourgmestre shall immediately inform the temporary occupant in writing.

The Secretary to the Commission mentioned in Article 4 of the present Order [Communal Commission] writes the request in an ad hoc register and acknowledges in writing that he received the request.

The ad hoc register shall mention:

1. The identification of the land owner requesting to be reinstated;
2. The date on which the request was handed in to the Secretary of the Commission;
3. Summarized reasons or proofs on which the owner bases his request;
4. The date on which the Commission made the decision, including a summary of the contents of the decision.

##### Article 24:

Requests to be reinstated in ownership rights are examined by the relevant commission within fifteen days from the time the request has reached the Commune Office.

The Commission's decision is communicated to those concerned within seven days after the decision has been made. A copy of the decision is handed to the people concerned.

##### Article 25:

If either party is not satisfied with the Commission's decision, he shall submit his appeal to the Prefet of Prefecture within 8 days after being informed of the decision.

In the event of the Commune Commission's refusal to make a decision within fifteen days after it has received the request, the applicant has seven days to appeal to the Prefet against the refusal to decide.

The Prefet shall make a decision on the appeal not later than one month from the time the appeal was registered at

the Prefecture. If, after one month, no decision has been made by the Prefet or if his decision does not satisfy the person appealing, the latter may submit the case to the judicial authority.

**Article 26:**

A register book shall be held in the Prefet's Secretariat for recording all the appeals regarding decisions made by the Communal Commission responsible for the abandoned land property.

1. The identity of the person appealing;
2. The date on which the appeal was received;
3. A summary of reasons/proofs on which the person bases his appeal;
4. The date on which the appealing person was informed of the decision made by the Commission;
5. The date of the Prefet's decision on the appeal as well as its contents.



## National Housing Rights Legislation



### Slovenia

#### Denationalization Law (1991, amended 1998)

[A person's rights to receive returned property are spelled out in the 1991 Denationalization Law, as amended in 1998. Slovenia's Constitutional Court emphasized that the purpose of the law is to correct injustices perpetrated by the state against property owners after the Second World War. The law does not cancel the nationalization legislation. For economic and political reasons, the Denationalization Law does not seek to restore the country to the pre-Second World War status quo regarding property, but to correct injustices - sometimes with cash compensation. Anyone whose property was nationalized may apply for redress. The government determines how much compensation is due, and whether it should be given in the form of physical property or money. These decisions are made on a case-by-case basis, and take into account such factors as the public interest, agricultural activity of the claimant and the means of acquisition.]



## National Housing Rights Legislation



### South Africa

#### Restitution of Land Rights Act (1994) (Act No. 16106)

Act: To provide for the restitution of rights in land in respect of which persons or communities were dispossessed under or for the purpose of furthering the objects of any racially based discriminatory law; to establish a Commission on Restitution of Land Rights and a Land Claims Court; and to provide for matters connected therewith.

Whereas the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), provides for the restitution of a right in land to a person or community dispossessed under or for the purpose of furthering the objects of any racially based discriminatory law;

And Whereas legislation for this purpose is to be designed to promote the protection and advancement of persons, groups or categories of person disadvantaged by unfair discrimination, in order to promote their full and equal enjoyment of rights in land:

#### Section 2. Enforcement of claim for restitution

- (1) A person shall be entitled to enforce restitution of a right in land if -
  - (a) he or she is a person or community contemplated in section 121(2) of the Constitution or a direct descendant of such a person; and
  - (b) the claim for such restitution is lodged within three years after a date fixed by the Minister by notice in the Gazette.
- (2) The date contemplated in subsection (1), shall be a date not earlier than the earliest of the dates contemplated in section 43.
- (3) The date contemplated in section 121(2)(a) of the Constitution is 19 June 1913.

#### Section 3. Claims against nominees

Subject to the provisions of this Act a person shall be entitled to claim land title in land if such claimant or his, her or its antecedent -

- (a) was prevented from obtaining or retaining title to the claimed land because of a law which would have been inconsistent with the prohibition of racial discrimination contained in section 8(2) of the Constitution had that subsection been in operation at the relevant time; and
- (b) proves that the registered owner of the land holds title as a result of a transaction between such registered owner or his, her or its antecedents and the claimant or his, her or its antecedents, in terms of which such registered owner or his her or its antecedents held the land on behalf of the claimant or his, her or its antecedents.

#### Section 4. Establishment of Commission on Restitution of Land Rights

- (1) There is hereby established a commission to be known as the Commission on Restitution of Land Rights.

#### Section 10. Lodgement of claims

- (1) Any person or the representative of any community who is of the opinion that he or she or the community which he or she represents is entitled to claim restitution of a right in land as contemplated in section 121 of the Constitution, may lodge such claim, which shall include a description of the land in question, and the nature of the right being claimed, on the form prescribed for this purpose by the Chief Land Claims Commissioner under section 16.

#### Section 22. Land Claims Court

- (1) There shall be a court of law to be known as the Land Claims Court which, in addition to the powers contemplated in section 123 of the Constitution, shall have the power -
  - (a) to determine restitution of any right in land in accordance with this Act;
  - (b) to determine compensation in terms of this Act;
  - (c) in respect of a claim in terms of section 3, to determine the person entitled to ownership;

(d) to determine all other matters which require to be determined in terms of sections 121, 122 and 123 of the Constitution.

(2) The Court shall have jurisdiction throughout the Republic and shall have all the ancillary powers necessary or reasonably incidental to the performance of its functions, including the power to grant interlocutory orders and interdicts. ...

### Section 33. Factors to be taken in account by court

In considering its decision in any particular matter, excluding the review of a decision in terms of section 15, the Court shall, in addition to the matters referred to in section 121, 122 and 123 of the Constitution, have regard to the following factors:

- (a) The desirability of providing for restitution of rights in land or compensation to people who were dispossessed of their rights in land as a result of or in pursuance of racially based discriminatory laws;
- (b) the desirability of remedying past violations of human rights;
- (c) the requirements of equity and justice;
- (d) the desirability of avoiding major social disruption;
- (e) any provision which already exists, in respect of the land in question in any matter, for that land to be dealt with in a manner which is designed to achieve the goals contemplated in section 8(3)(a) of the Constitution;
- (f) any other factor which the Court may consider relevant and consistent with the spirit and objects of the Constitution and in particular the provisions of section 8 of the Constitution.



## National Housing Rights Legislation



### Tajikistan

#### Special Law on the Return of Illegally Occupied Houses

[This law deals with housing that was illegally occupied during the conflict between the Government of Tajikistan and the United Tajik Opposition, which concluded with the signing of a Peace Accord in June 1997.]



## National Housing Rights Legislation



### Tajikistan

#### Resolution No. 542 of 22 August 1995 on Additional Measures Facilitating the Return of Refugees-Citizens of the Republic of Tajikistan and Forced Migrants to the Places of Permanent Residence and Their Social and Legal Protection

With the aim of activating efforts on returning refugees-citizens of the Republic of Tajikistan and forced migrants to the places of permanent residence, strengthening their social and legal protection and in accordance with the statement of the government delegation of the Republic of Tajikistan on the results of the fourth round of inter-Tajik talks in Almaty, the Government of the Republic of Tajikistan resolves;

1. The ministries departments of the Republic of Tajikistan, heads of oblasts, cities and rayons of the Republic of Tajikistan shall intensify the work of the organized return of the refugees and forced migrants to the places of permanent residence and their social and legal protection.
2. With the aim of efficiently solving the questions arising in connection with the return of refugees - citizens of the Republic of Tajikistan and forced migrants to the places of permanent residence, their social and legal protection a government commission shall be set up in accordance with the supplement.
4. With the aim of facilitating the earliest social and economic adaptation of the refugees-citizens of the Republic of Tajikistan and forced migrants returned to the places of permanent residence, the Ministry of Internal Affairs of the Republic of Tajikistan, hukumats of oblasts, cities and rayons of the Republic of Tajikistan in common with the agencies of the Procurator's Office of the Republic of Tajikistan shall:
  - immediately vacate illegally occupied dwellings owned or rented by the refugees-citizens of the Republic of Tajikistan and forced migrants in houses belonging to the State or communal housing fund and pass them to their rightful owners;
  - in case of the destruction or loss of the State-owned dwelling, provide out of turn an available dwelling space at his whereabouts in conformity with the standards in force in the Republic. According to the wish of the victims, in return for the dwelling, allot them a land plot for the construction of a dwelling house or give them a right to join a building cooperative out of turn.
6. The State Committee of the Republic of Tajikistan on Contracts and Trade, the Board of Tajikmatlubot shall provide persons from among refugees-citizens of the Republic of Tajikistan and forced migrants and forced migrants building their own houses with main types of building materials in the first instance according to the claims of thukumats.



## National Housing Rights Legislation



### Tajikistan

#### The Law of the Republic of Tajikistan on Forced Migrants (20 July 1994)

##### Article 11 - Safeguarding Security of the Forced Migrants on Their to Places of Permanent Residence

Organs of State power and administration are obliged to safeguard the security of the forced migrants on their return to their places of permanent residences as well as observation of their rights and lawful interests.

##### Article 12 - the Rights of Forced Migrants Upon Arrival in their Places of Permanent Residence

A forced migrant, after return to his place of permanent residence, has the right to:

- repossess the personal and real estate left by him under the circumstances foreseen by the Article 1 of the present law;
- receive a lump sum allowance or other cash benefit, the sum of which is determined by the Council of Ministers of the Republic of Tajikistan;
- receive credit on preferential terms to reconstruct and build new houses and outbuildings to replace what has been destroyed;

##### Article 13 - The Fund of Assistance to Forced Migrants

To ensure favourable material conditions and compensation of expenses on accommodation at new permanent places of residence in the territory of the Republic of Tajikistan and at the places of previous residence the Fund of Assistance to Forced migrants hereby is established within the Central Refugee Department of the Ministry of Labour and Employment of Population of the Republic of Tajikistan.

The Fund shall be formed on the basis of receipts from the State Budget of the Republic of Tajikistan, other states and international organizations on the basis of agreements and other documents concluded by the Republic of Tajikistan, receipts from province, town and district budgets, voluntary donations on the part of domestic and foreign enterprises, public organisations and individual persons.

##### Article 14 - Sources of Compensation of Expenses of Reception and Accommodation of Forced Migrants

Expenses on the part of the local State power and administration organs connected with reception and accommodation of forced migrants on their territory shall be reimbursed from republican budget of the Republic of Tajikistan and the fund of Assistance within the Central Refugee Department of the Ministry of Labour and Employment of Population of the Republic of Tajikistan.





## National Housing Rights Legislation



### Serbia and Montenegro (Kosovo)

UNMIK Regulation No. 1999/23 (on the establishment of the Housing and Property Directorate and the Housing and Property Claims Commission) (15 November 1999)

The Special Representative of the Secretary-General,

Hereby promulgates the following:

#### Section 1 – Housing and Property Directorate

1. The Housing and Property Directorate (the “Directorate”) shall provide overall direction on property rights in Kosovo until the Special Representative of the Secretary-General determines that local governmental institutions are able to carry out the functions entrusted to the Directorate, in particular, the Directorate shall:
  - a. Conduct an inventory of abandoned private, state and socially owned housing;
  - b. Supervise the utilization or rental of such abandoned property on a temporary basis for humanitarian purposes; rental monies of abandoned private and socially owned property shall be recorded in a separate account in trust for the rightful owner, subject to deduction of relevant expenses;
  - c. Provide guidance to UNMIK, including CIVPOL, and UNHCR, as well as KFOR on specific issues related to property rights; and
  - d. Conduct research leading to recommended policies and legislation concerning property rights.
2. As an exception to the jurisdiction of the local courts, the Directorate shall receive and register the following categories of claims concerning residential property including associated property:
  - a. Claims by natural persons whose ownership, possession or occupancy rights to residential real property have been revoked subsequent to 23 March 1989 on the basis of legislation which is discriminatory in its application or intent;
  - b. Claims by natural persons who entered into informal transactions of residential real property on the basis of the free will of the parties subsequent to 23 March 1989;
  - c. Claims by natural persons who were the owners, possessors or occupancy right holders of residential real property prior to 24 March 1999 and who do not now enjoy possession of the property, and where the property has not voluntarily been transferred.

The Directorate shall refer these claims to the Housing and Property Claims Commission for resolution or, if appropriate, seek to mediate such disputes and, if not successful, refer them to the Housing and Property Claims Commission for resolution.

#### Section 2 – Housing and Property Claims Commission

1. The Housing and Property Claims Commission (the “Commission”) is an independent organ of the Directorate which shall settle private non-commercial disputes concerning residential property referred to it by the Directorate until the Special Representative of the Secretary-General determines that local courts are able to carry out the functions entrusted to the Commission.
2. The Commission shall initially be composed of one Panel of two international and one local members, all of whom shall be experts in the field of housing and property law and competent to hold judicial office. The Special Representative of the Secretary-General shall appoint the members of the Panel and shall designate one member as the chairperson. The Special Representative of the Secretary-General may establish additional Panels of the Commission in consultation with the Commission.
3. Before taking office, the members of the Commission shall make in writing the following solemn declaration:

“I solemnly declare that I will perform my duties and exercise my power as a member of the Housing and Property Claims Commission honourably, faithfully, impartially and conscientiously.”

The declaration shall be put in the archives of the Commission.
4. The Commission shall be entitled to free access to any and all records in Kosovo relevant to the settlement of a dispute submitted to it.
5. As an exception to the jurisdiction of local courts, the Commission shall have exclusive jurisdiction to settle

the categories of claims listed in section 1.2 of the present regulation. Nevertheless, the Commission may refer specific separate parts of such claims to the local courts or administrative organs, if the adjudication of those separate parts does not raise the issues listed in section 1.2. Pending investigation or resolution of a claim, the Commission may issue provisional measures of protection.

6. The Special Representative of the Secretary-General shall establish by regulation the Rules of Procedure and Evidence of the Commission, upon the recommendation of the Commission. Such rules shall guarantee fair and impartial proceedings in accordance with internationally recognized human rights standards. In particular, such rules shall include provisions on reconsideration of decision of the Commission.
7. Final decisions of the Commission are binding and enforceable, and are not subject to review by any other judicial or administrative authority in Kosovo.

#### Executive Director and Staff

The Special Representative of the Secretary-General shall appoint an Executive Director of the Directorate after consultation with the Executive Director of the United Nations Centre for Human Settlements (UNCHS) (Habitat). The Executive Director shall appoint the staff of the Directorate, which shall comprise local experts, and shall allocate staff to the Commission who shall be under the exclusive control of the Commission.

#### Applicable Law

The provisions of the applicable laws relating to property rights shall apply subject to the provisions of the present regulation.



## National Housing Rights Legislation



### Sweden Swedish Rent Law

#### Section 2.

The rent agreement shall be established in writing, if the landlord or the tenant asks for it.

If the rent agreement is established in writing and someone with legality replaces the tenant, then this should be noted on the rent agreement if asked for.

#### Section 10.

The rent agreement becomes invalid if the apartment before the take over day becomes so destroyed that it cannot be used for the designated purpose. If the landlord is responsible for the incident or if he does not without delay leave the tenant a message about it, then the tenant has the right to compensation for damage.

If a public authority before the take over day issues a statement prohibiting the apartment to be used as a residence because the apartment's condition render the designated purpose, then the rent agreement ceases to exist, even if the decision has not yet obtained legal force. The tenant has the right to compensation for damage, if the condition that has preceded the decision derives from neglect from the landlord or if he does not without delay leave the tenant a message about the authority's decision.

#### Section 11.

If minor damage than what is stated in Section 10, first paragraph occurs on the apartment before the tenancy begins and the damage is not fixed when the apartment shall be taken over, or in other cases than what is stated in Section 13, the apartment on the take over day is not in the condition that the tenant has the right to demand, then can the tenant fix the damage on the landlord's account, if the landlord fails, after being told to fix the reparation as soon as it can be done. If the damage can not be repaired without delay or the landlord after being informed neglects to fix the damage as soon as possible, the tenant has the right to terminate the rent agreement. Termination can only be done if the damage is of considerable importance. After the damage has been repaired by the landlord the rent agreement can not be terminated. During the time period the apartment is imperfect, the tenant has the right to reasonable lowering of the rent.

The tenant has also the right to compensation for damage in cases that refers to the first paragraph, if the landlord can not show that the damage does not depend on his neglect.

The first and second paragraphs are also in force if an apartment for recreational purposes or for premises has been rented out in existing condition and it is not according to the local district's common understanding fully useful for its purpose and the tenant did not know about the damage when the lease was established or could not detect it through general observation.

#### Section 12.

If a public authority before the take over day issues a statement that restricts the tenant from using certain areas of the apartment because of the condition of those areas, or that the tenant in some other way will suffer in his right to use the apartment, then he has right to reasonable lowering of the rent. If the verdict affects a significant part of the right to use the apartment, then the tenant has the right to terminate the rent agreement even if the verdict does not yet have legal force. Section 10, second paragraph, second sentence applies to questions concerning compensation for damage.

#### Section 13.

If the rent agreement is for an apartment that was not completed when the rent agreement was established and if the apartment is still not ready when the take over date comes, the tenant has the right to reasonable lowering of the rent and the same right to terminate the rent agreement that is referred to in Section 11. Termination can be made before the agreed take over day, if it is obvious that the apartment will not be ready for the intended purpose.

The tenant has also right to compensation for damage, if the landlord does not show that the delay is not caused by his neglect.

#### Section 16.

The regulations in Sections 10-12, are also in force if,

- (1) the apartment is damaged during tenancy and the tenant is not responsible for the damage,
- (2) the landlord does not fulfill his responsibility for maintenance according to Section 15, the second paragraph.
- (3) hindrance or damage in the right to use the apartment in some other way occurs and it is not caused by the tenant, or
- (4) a public authority during the tenancy issues a statement according to Section 10, second paragraph or Section 12, and it is not caused by the tenant, however the regulations are not in force until the decision has been a guide.

If the rent agreement is for a tenement, the rent tribunal is allowed to impose a commandment to action upon the landlord so that he corrects the damage for cases that are discussed in first paragraph 1-3 or when the landlord does not fulfill his duty of maintenance referred to in Section 15, third paragraph and the tenant has submitted a petition for correction to be imposed.

The commandment to action which can be combined with a fine, shall state a specific time period under which the damage pointed out in the commandment to action shall have been corrected. The time period can be extended if specific circumstances exist and a request is made before the expiration date.

The landlord and the tenant can with binding effect enter an agreement that restricts the rights according to the first paragraph when hindrance or suffering in the use occurs because the landlord has arrangement for work to be done so that the apartment is restored to the condition agreement upon or so that customary maintenance of the apartment or the real estate in general or other work can be done that is stated in the agreement.

Petition for commandment to action can be directed toward the person who last has been granted or sought legal ratification of the property, even if this person has conveyed the real estate before the petition is made.

If the real estate is conveyed after the petition is made or if cases exist according to the fourth paragraph, then the Rules of the Courts regulations are in force and the object of dispute is transferred with a third party participation in a trial.

If a dispute regarding ownership is noticed in the land register a petition of commandment to action can be directed toward the party that possesses the real estate with claim of ownership.



## National Housing Rights Legislation



### Habitability

Under international law, habitability is yet another component of adequate housing. Habitability refers to the ability of housing to offer its inhabitants essential protection. General Comment No. 4 defines habitability as “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.” To be considered habitable, housing must also guarantee the physical safety of occupants.

There is a lack of national legislation that comprehensively protects the international understanding of habitability, however many States address habitability through local law. Below are samples of national legislation addressing some aspects of habitability, including adequate safety, adequate health and adequate privacy.



## National Housing Rights Legislation



### New Zealand

#### The Residential Tenancies Act No. 120 (1986)

#### Part II Tenancy Agreements (Preliminary Matters)

##### Section 12. Discrimination on certain grounds prohibited -

- (1) Except with prior consent of the Tenancy Tribunal, a landlord shall not, in respect of the grant, continuance, extension, variation, termination, or renewal of a tenancy agreement, discrimination against any person on any of the following grounds:
  - (a) That the person has had a child, or is pregnant, or is not sterile;
  - (b) That it is intended that a child will reside in the premises or that a child will reside is or has been residing in the premises during the tenancy;
  - (c) That the person is unemployed or likely to become unemployed.
- (2) Except with the prior consent of the Tenancy Tribunal, a landlord shall not, in respect of the grant, continuance, extension, variation, termination, or renewal of a tenancy agreement:
  - (a) Instruct any person to discriminate against any other person on any of the grounds set out in subsection (1) of this section; or
  - (b) State an intention (whether by advertisement or otherwise) to discriminate against any person on any of those grounds.
- (3) Discrimination against any person in contravention of subsection (1) of this section, and the giving of an instruction or the stating of an intention in contravention of subsection (2) of this section, is each hereby declared to be an unlawful act.

#### Part II Tenancy Agreements (Preliminary Matters)

##### Section 45. Landlord's responsibilities -

- (1) The landlord shall:
  - (a) Provide the premises in a reasonable state of cleanliness; and
  - (b) Provide and maintain the premises in a reasonable state of repair having regard to the age and character of the premises and the period during which the premises are likely to remain habitable and available for residential purposes; and
  - (c) Comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises; and
  - (d) Compensate the tenant for any reasonable expenses incurred by the tenant in repairing the premises where -
    - (i) The state of disrepair has arisen otherwise than as a result of a breach of the tenancy agreement by the tenant and is likely to cause injury to persons or property or is otherwise serious and urgent; and
    - (ii) The tenant has made a reasonable attempt to give the landlord notice of the state of disrepair.
  - (e) Take all reasonable steps to ensure that none of the landlord's other tenants causes or permits any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises.
- (2) The landlord shall not interfere with the supply of gas, electricity, water, telephone services, or other services to the premises, except where the interference is necessary to avoid danger to any person or to enable maintenance or repairs to be carried out.
- (3) The provisions of subsection (1) of this section shall apply notwithstanding that the tenant has notice of the state of the premises at the time at which the tenancy agreement is entered into.
- (4) Nothing in subsection (1) of this section shall impose upon the landlord any obligation to repair any damage, or compensate the tenant for any want of repair, arising out of any breach, by the tenant of any obligation imposed on tenants by section 40 of this Act.

(5) In this section “premises” includes facilities.



## National Housing Rights Legislation



### New Zealand

#### The Residential Tenancies Act No. 120 (1986)

#### Part II Tenancy Agreements (Preliminary Matters)

##### Section 12. Discrimination on certain grounds prohibited -

- (1) Except with prior consent of the Tenancy Tribunal, a landlord shall not, in respect of the grant, continuance, extension, variation, termination, or renewal of a tenancy agreement, discrimination against any person on any of the following grounds:
  - (a) That the person has had a child, or is pregnant, or is not sterile;
  - (b) That it is intended that a child will reside in the premises or that a child will reside is or has been residing in the premises during the tenancy;
  - (c) That the person is unemployed or likely to become unemployed.
- (2) Except with the prior consent of the Tenancy Tribunal, a landlord shall not, in respect of the grant, continuance, extension, variation, termination, or renewal of a tenancy agreement:
  - (a) Instruct any person to discriminate against any other person on any of the grounds set out in subsection (1) of this section; or
  - (b) State an intention (whether by advertisement or otherwise) to discriminate against any person on any of those grounds.
- (3) Discrimination against any person in contravention of subsection (1) of this section, and the giving of an instruction or the stating of an intention in contravention of subsection (2) of this section, is each hereby declared to be an unlawful act.

#### Part II Tenancy Agreements (Preliminary Matters)

##### Section 45. Landlord's responsibilities -

- (1) The landlord shall:
  - (a) Provide the premises in a reasonable state of cleanliness; and
  - (b) Provide and maintain the premises in a reasonable state of repair having regard to the age and character of the premises and the period during which the premises are likely to remain habitable and available for residential purposes; and
  - (c) Comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises; and
  - (d) Compensate the tenant for any reasonable expenses incurred by the tenant in repairing the premises where -
    - (i) The state of disrepair has arisen otherwise than as a result of a breach of the tenancy agreement by the tenant and is likely to cause injury to persons or property or is otherwise serious and urgent; and
    - (ii) The tenant has made a reasonable attempt to give the landlord notice of the state of disrepair.
  - (e) Take all reasonable steps to ensure that none of the landlord's other tenants causes or permits any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises.
- (2) The landlord shall not interfere with the supply of gas, electricity, water, telephone services, or other services to the premises, except where the interference is necessary to avoid danger to any person or to enable maintenance or repairs to be carried out.
- (3) The provisions of subsection (1) of this section shall apply notwithstanding that the tenant has notice of the state of the premises at the time at which the tenancy agreement is entered into.
- (4) Nothing in subsection (1) of this section shall impose upon the landlord any obligation to repair any damage, or compensate the tenant for any want of repair, arising out of any breach, by the tenant of any obligation imposed on tenants by section 40 of this Act.



(5) In this section “premises” includes facilities.



## National Housing Rights Legislation



### Germany

Constitution of Sachsen-Anhalt (1992)<sup>[24]</sup>

#### Article 40. Housing

- (1) The State and local authorities have responsibilities to ensure support for the construction of housing, the maintenance of existing housing supplies and through other measures to guarantee dignified living space and adequate living conditions for everyone.
- (2) The State and the local authorities shall ensure that no one becomes homeless.



## National Housing Rights Legislation



**Greece**  
Constitution (1975)

Art. 21(4)

The provisions of housing to those who are homeless or live in inadequate housing conditions shall be the subject of special attention by the State.



## National Housing Rights Legislation



### United Kingdom

#### Homeless Persons Act (1977, as amended by the Housing Act of 1996)

#### PART VII: Homelessness

##### *Homelessness and threatened homelessness*

175.

- (1) A person is homeless if he has no accommodation available for his occupation, in the United Kingdom or elsewhere, which he-
  - (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,
  - (b) has an express or implied licence to occupy, or
  - (c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.
- (2) A person is also homeless if he has accommodation but-
  - (a) he cannot secure entry to it, or
  - (b) it consists of a moveable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it.
- (3) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.
- (4) A person is threatened with homelessness if it is likely that he will become homeless within 28 days.

176.

Accommodation shall be regarded as available for a person's occupation only if it is available for occupation by him together with-

- (a) any other person who normally resides with him as a member of his family, or
- (b) any other person who might reasonably be expected to reside with him.

References in this Part to securing that accommodation is available for a person's occupation shall be construed accordingly.

177.

- (1) It is not reasonable for a person to continue to occupy accommodation if it is probable that this will lead to domestic violence against him, or against-
  - (a) a person who normally resides with him as a member of his family, or
  - (b) any other person who might reasonably be expected to reside with him.

For this purpose "domestic violence", in relation to a person, means violence from a person with whom he is associated, or threats of violence from such a person which are likely to be carried out.

- (2) In determining whether it would be, or would have been, reasonable for a person to continue to occupy accommodation, regard may be had to the general circumstances prevailing in relation to housing in the district of the local housing authority to whom he has applied for accommodation or for assistance in obtaining accommodation.
- (3) The Secretary of State may by order specify-
  - (a) other circumstances in which it is to be regarded as reasonable or not reasonable for a person to continue to occupy accommodation, and
  - (b) other matters to be taken into account or disregarded in determining whether it would be, or would have been, reasonable for a person to continue to occupy accommodation.

178.

- (1) For the purposes of this Part, a person is associated with another person if-
- (a) they are or have been married to each other;
  - (b) they are cohabitants or former cohabitants;
  - (c) they live or have lived in the same household;
  - (d) they are relatives;
  - (e) they have agreed to marry one another (whether or not that agreement has been terminated);
  - (f) in relation to a child, each of them is a parent of the child or has, or has had, parental responsibility for the child.
- (2) If a child has been adopted or has been freed for adoption by virtue of any of the enactments mentioned in section 16(1) of the Adoption Act 1976, two persons are also associated with each other for the purposes of this Part if-
- (a) one is a natural parent of the child or a parent of such a natural parent, and
  - (b) the other is the child or a person-
    - (i) who has become a parent of the child by virtue of an adoption order or who has applied for an adoption order, or
    - (ii) with whom the child has at any time been placed for adoption.
- (3) In this section-
- "adoption order" has the meaning given by section 72(1) of the Adoption Act 1976;
- "child" means a person under the age of 18 years;
- "cohabitants" means a man and a woman who, although not married to each other, are living together as husband and wife, and "former cohabitants" shall be construed accordingly;
- "parental responsibility" has the same meaning as in the Children Act 1989; and
- "relative", in relation to a person, means-
- (a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person's spouse or former spouse, or
  - (b) the brother, sister, uncle, aunt, niece or nephew (whether of the full blood or of the half blood or by affinity) of that person or of that person's spouse or former spouse,
- and includes, in relation to a person who is living or has lived with another person as husband and wife, a person who would fall within paragraph (a) or (b) if the parties were married to each other.

*General functions in relation to homelessness or threatened homelessness*

179.

- (1) Every local housing authority shall secure that advice and information about homelessness, and the prevention of homelessness, is available free of charge to any person in their district.
- (2) The authority may give to any person by whom such advice and information is provided on behalf of the authority assistance by way of grant or loan.
- (3) A local housing authority may also assist any such person-
  - (a) by permitting him to use premises belonging to the authority,
  - (b) by making available furniture or other goods, whether by way of gift, loan or otherwise, and
  - (c) by making available the services of staff employed by the authority.

180.

- (1) The Secretary of State or a local housing authority may give assistance by way of grant or loan to voluntary organisations concerned with homelessness or matters relating to homelessness.
- (2) A local housing authority may also assist any such organisation-
  - (a) by permitting them to use premises belonging to the authority,

- (b) by making available furniture or other goods, whether by way of gift, loan or otherwise, and
  - (c) by making available the services of staff employed by the authority.
- (3) A "voluntary organisation" means a body (other than a public or local authority) whose activities are not carried on for profit.

181.

- (1) This section has effect as to the terms and conditions on which assistance is given under section 179 or 180.
- (2) Assistance shall be on such terms, and subject to such conditions, as the person giving the assistance may determine.
- (3) No assistance shall be given unless the person to whom it is given undertakes-
  - (a) to use the money, furniture or other goods or premises for a specified purpose, and
  - (b) to provide such information as may reasonably be required as to the manner in which the assistance is being used.

The person giving the assistance may require such information by notice in writing, which shall be complied with within 21 days beginning with the date on which the notice is served.

- (4) The conditions subject to which assistance is given shall in all cases include conditions requiring the person to whom the assistance is given-
  - (a) to keep proper books of account and have them audited in such manner as may be specified,
  - (b) to keep records indicating how he has used the money, furniture or other goods or premises, and
  - (c) to submit the books of account and records for inspection by the person giving the assistance.
- (5) If it appears to the person giving the assistance that the person to whom it was given has failed to carry out his undertaking as to the purpose for which the assistance was to be used, he shall take all reasonable steps to recover from that person an amount equal to the amount of the assistance.
- (6) He must first serve on the person to whom the assistance was given a notice specifying the amount which in his opinion is recoverable and the basis on which that amount has been calculated.

182.

- (1) In the exercise of their functions relating to homelessness and the prevention of homelessness, a local housing authority or social services authority shall have regard to such guidance as may from time to time be given by the Secretary of State.
- (2) The Secretary of State may give guidance either generally or to specified descriptions of authorities.

*Application for assistance in case of homelessness or threatened homelessness*

183.

- (1) The following provisions of this Part apply where a person applies to a local housing authority for accommodation, or for assistance in obtaining accommodation, and the authority have reason to believe that he is or may be homeless or threatened with homelessness.
- (2) In this Part-
  - "applicant" means a person making such an application,
  - "assistance under this Part" means the benefit of any function under the following provisions of this Part relating to accommodation or assistance in obtaining accommodation, and
  - "eligible for assistance" means not excluded from such assistance by section 185 (persons from abroad not eligible for housing assistance) or section 186 (asylum seekers and their dependants).
- (3) Nothing in this section or the following provisions of this Part affects a person's entitlement to advice and information under section 179 (duty to provide advisory services).

184.

- (1) If the local housing authority have reason to believe that an applicant may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves-
  - (a) whether he is eligible for assistance, and

(b) if so, whether any duty, and if so what duty, is owed to him under the following provisions of this Part.

- (2) They may also make inquiries whether he has a local connection with the district of another local housing authority in England, Wales or Scotland.
- (3) On completing their inquiries the authority shall notify the applicant of their decision and, so far as any issue is decided against his interests, inform him of the reasons for their decision.
- (4) If the authority have notified or intend to notify another local housing authority under section 198 (referral of cases), they shall at the same time notify the applicant of that decision and inform him of the reasons for it.
- (5) A notice under subsection (3) or (4) shall also inform the applicant of his right to request a review of the decision and of the time within which such a request must be made (see section 202).
- (6) Notice required to be given to a person under this section shall be given in writing and, if not received by him, shall be treated as having been given to him if it is made available at the authority's office for a reasonable period for collection by him or on his behalf.

### *Eligibility for assistance*

#### 185.

- (1) A person is not eligible for assistance under this Part if he is a person from abroad who is ineligible for housing assistance.
- (2) A person who is subject to immigration control within the meaning of the Asylum and Immigration Act 1996 is not eligible for housing assistance unless he is of a class prescribed by regulations made by the Secretary of State.
- (3) The Secretary of State may make provision by regulations as to other descriptions of persons who are to be treated for the purposes of this Part as persons from abroad who are ineligible for housing assistance.
- (4) A person from abroad who is not eligible for housing assistance shall be disregarded in determining for the purposes of this Part whether another person-
  - (a) is homeless or threatened with homelessness, or
  - (b) has a priority need for accommodation.

#### 186.

- (1) An asylum-seeker, or a dependant of an asylum-seeker who is not by virtue of section 185 a person from abroad who is ineligible for housing assistance, is not eligible for assistance under this Part if he has any accommodation in the United Kingdom, however temporary, available for his occupation.
- (2) For the purposes of this section a person who makes a claim for asylum-
  - (a) becomes an asylum-seeker at the time when his claim is recorded by the Secretary of State as having been made, and
  - (b) ceases to be an asylum-seeker at the time when his claim is recorded by the Secretary of State as having been finally determined or abandoned.
- (3) For the purposes of this section a person-
  - (a) becomes a dependant of an asylum-seeker at the time when he is recorded by the Secretary of State as being a dependant of the asylum-seeker, and
  - (b) ceases to be a dependant of an asylum-seeker at the time when the person whose dependant he is ceases to be an asylum-seeker or, if it is earlier, at the time when he is recorded by the Secretary of State as ceasing to be a dependant of the asylum-seeker.
- (4) In relation to an asylum-seeker, "dependant" means a person-
  - (a) who is his spouse or a child of his under the age of eighteen, and
  - (b) who has neither a right of abode in the United Kingdom nor indefinite leave under the Immigration Act 1971 to enter or remain in the United Kingdom.
- (5) In this section a "claim for asylum" means a claim made by a person that it would be contrary to the United Kingdom's obligations under the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and the Protocol to that Convention for him to be removed from, or required to leave, the United Kingdom.

187.

- (1) The Secretary of State shall, at the request of a local housing authority, provide the authority with such information as they may require-
  - (a) as to whether a person is or has become an asylum-seeker, or a dependant of an asylum-seeker, and
  - (b) to enable them to determine whether such a person is eligible for assistance under this Part under section 185 (persons from abroad not eligible for housing assistance).
- (2) Where that information is given otherwise than in writing, the Secretary of State shall confirm it in writing if a written request is made to him by the authority.
- (3) If it appears to the Secretary of State that any application, decision or other change of circumstances has affected the status of a person about whom information was previously provided by him to a local housing authority under this section, he shall inform the authority in writing of that fact, the reason for it and the date on which the previous information became inaccurate.

*Interim duty to accommodate*

188.

- (1) If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they shall secure that accommodation is available for his occupation pending a decision as to the duty (if any) owed to him under the following provisions of this Part.
- (2) The duty under this section arises irrespective of any possibility of the referral of the applicant's case to another local housing authority (see sections 198 to 200).
- (3) The duty ceases when the authority's decision is notified to the applicant, even if the applicant requests a review of the decision (see section 202).

The authority may continue to secure that accommodation is available for the applicant's occupation pending a decision on a review.

189.

- (1) The following have a priority need for accommodation-
  - (a) a pregnant woman or a person with whom she resides or might reasonably be expected to reside;
  - (b) a person with whom dependent children reside or might reasonably be expected to reside;
  - (c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;
  - (d) a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster.
- (2) The Secretary of State may by order-
  - (a) specify further descriptions of persons as having a priority need for accommodation, and
  - (b) amend or repeal any part of subsection (1).
- (3) Before making such an order the Secretary of State shall consult such associations representing relevant authorities, and such other persons, as he considers appropriate.
- (4) No such order shall be made unless a draft of it has been approved by resolution of each House of Parliament.

*Duties to persons found to be homeless or threatened with homelessness*

190.

- (1) This section applies where the local housing authority are satisfied that an applicant is homeless and is eligible for assistance but are also satisfied that he became homeless intentionally.
- (2) If the authority are satisfied that the applicant has a priority need, they shall-
  - (a) secure that accommodation is available for his occupation for such period as they consider will give him a reasonable opportunity of securing accommodation for his occupation, and
  - (b) provide him with advice and such assistance as they consider appropriate in the circumstances in any



attempts he may make to secure that accommodation becomes available for his occupation.

- (3) If they are not satisfied that he has a priority need, they shall provide him with advice and such assistance as they consider appropriate in the circumstances in any attempts he may make to secure that accommodation becomes available for his occupation.

191.

- (1) A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.
- (2) For the purposes of subsection (1) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate.
- (3) A person shall be treated as becoming homeless intentionally if-
  - (a) he enters into an arrangement under which he is required to cease to occupy accommodation which it would have been reasonable for him to continue to occupy, and
  - (b) the purpose of the arrangement is to enable him to become entitled to assistance under this Part, and there is no other good reason why he is homeless.
- (4) A person who is given advice or assistance under section 197 (duty where other suitable alternative accommodation available), but fails to secure suitable accommodation in circumstances in which it was reasonably to be expected that he would do so, shall, if he makes a further application under this Part, be treated as having become homeless intentionally.

192.

- (1) This section applies where the local housing authority-
  - (a) are satisfied that an applicant is homeless and eligible for assistance, and
  - (b) are not satisfied that he became homeless intentionally, but are not satisfied that he has a priority need.
- (2) The authority shall provide the applicant with advice and such assistance as they consider appropriate in the circumstances in any attempts he may make to secure that accommodation becomes available for his occupation.

193.

- (1) This section applies where the local housing authority are satisfied that an applicant is homeless, eligible for assistance and has a priority need, and are not satisfied that he became homeless intentionally.

This section has effect subject to section 197 (duty where other suitable accommodation available).

- (2) Unless the authority refer the application to another local housing authority (see section 198), they shall secure that accommodation is available for occupation by the applicant.
- (3) The authority are subject to the duty under this section for a period of two years ("the minimum period"), subject to the following provisions of this section.

After the end of that period the authority may continue to secure that accommodation is available for occupation by the applicant, but are not obliged to do so (see section 194).

- (4) The minimum period begins with-
  - (a) if the applicant was occupying accommodation made available under section 188 (interim duty to accommodate), the day on which he was notified of the authority's decision that the duty under this section was owed to him;
  - (b) if the applicant was occupying accommodation made available to him under section 200(3) (interim duty where case considered for referral but not referred), the date on which he was notified under subsection (2) of that section of the decision that the conditions for referral were not met;
  - (c) in any other case, the day on which accommodation was first made available to him in pursuance of the duty under this section.
- (5) The local housing authority shall cease to be subject to the duty under this section if the applicant, having been informed by the authority of the possible consequence of refusal, refuses an offer of accommodation which the authority are satisfied is suitable for him and the authority notify him that they regard themselves as having discharged their duty under this section.

- (6) The local housing authority shall cease to be subject to the duty under this section if the applicant-
- (a) ceases to be eligible for assistance,
  - (b) becomes homeless intentionally from the accommodation made available for his occupation,
  - (c) accepts an offer of accommodation under Part VI (allocation of housing), or
  - (d) otherwise voluntarily ceases to occupy as his only or principal home the accommodation made available for his occupation.
- (7) The local housing authority shall also cease to be subject to the duty under this section if-
- (a) the applicant, having been informed of the possible consequence of refusal, refuses an offer of accommodation under Part VI, and
  - (b) the authority are satisfied that the accommodation was suitable for him and that it was reasonable for him to accept it and notify him accordingly within 21 days of the refusal.
- (8) For the purposes of subsection (7) an applicant may reasonably be expected to accept an offer of accommodation under Part VI even though he is under contractual or other obligations in respect of his existing accommodation, provided he is able to bring those obligations to an end before he is required to take up the offer.
- (9) A person who ceases to be owed the duty under this section may make a fresh application to the authority for accommodation or assistance in obtaining accommodation.



## National Housing Rights Legislation



### **United Kingdom: Scotland** The Homelessness Act of 2003

[This law may well be one of the more progressive anti-homelessness laws in Europe. If effectively implemented, this legislation has the potential to guarantee protection of the right to adequate housing for all homeless persons in Scotland by 2012.]

No information on relevant legislative clauses is available from this country.

Should you have such information we would appreciate if you could forward this to [Housing.Policy@unhabitat.org](mailto:Housing.Policy@unhabitat.org)

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## National Housing Rights Legislation



### **Ethiopia** Constitution (1994)

#### Article 40. The Right to Property

- (5) Ethiopian pastoralists have a right to free land for grazing and cultivation as well as a right not to be displaced from their own lands. This implementation shall be specified by law
- (7) Every Ethiopian shall have the full right to the immovable property he builds on the land and to the improvements he brings about on the land by his labor or capital. This right shall include the right to alienate, to bequeath, and where right of use expires, to remove his property, transfer his title, or claim compensation for it. Particulars shall be determined by law.
- (8) Government has the power to expropriate, in the public interest, private property. In all such cases, government shall pay compensation in advance commensurate to the value of the expropriated property.

#### Article 44. Environmental Rights

- (1) All persons have the right to a clean and healthy environment.
- (2) All persons who have been displaced or whose livelihoods have been adversely affected as a result of State programmes have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance.



No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### **Mozambique** Constitution (1990)

#### Article 104

The home as well as the correspondence and other forms of private communication of citizens shall be inviolable, except in such cases as specifically stipulated by law.

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### Rwanda

#### Ministerial Order No. 01/96 of September 23, 1996 Regarding the Temporary Management of Land Property

#### Chapter One: Preliminary Provisions

##### Article 1:

The Commune is bestowed with full authority to ensure on behalf of the government the management of all the land property in rural areas of their jurisdiction that have been abandoned by their owners.

##### Article 2:

Within the framework of the present order, portions of land in rural areas are those that are not located in boundary limits of towns as determined by the decree of April 20, 1979.

The present order concerns land property that is not registered in official documents and has been abandoned by its owners. It does not concern all the land in rural areas which has been registered (in cadastre) or any other land that is normally counted in Government property and has never been allocated (left overs, swamps, military fields, research fields, etc.).

##### Article 3:

Shall be considered as abandoned property:

1. Any land whose owner died without leaving behind his legitimate wife or children;
2. Any land whose owner, his legitimate wife and children are out of the country.

#### Chapter V: Modalities for the Land Owner to be Reinstated in His Rights

##### Article 23:

The land owner, his legitimate wife and children have the full right to have their property returned upon their repatriation.

They shall submit their request to the Bourgmestre where the property is located.

The Bourgmestre shall immediately inform the temporary occupant in writing.

The Secretary to the Commission mentioned in Article 4 of the present Order [Communal Commission] writes the request in an ad hoc register and acknowledges in writing that he received the request.

The ad hoc register shall mention:

1. The identification of the land owner requesting to be reinstated;
2. The date on which the request was handed in to the Secretary of the Commission;
3. Summarized reasons or proofs on which the owner bases his request;
4. The date on which the Commission made the decision, including a summary of the contents of the decision.

##### Article 24:

Requests to be reinstated in ownership rights are examined by the relevant commission within fifteen days from the time the request has reached the Commune Office.

The Commission's decision is communicated to those concerned within seven days after the decision has been made. A copy of the decision is handed to the people concerned.

##### Article 25:

If either party is not satisfied with the Commission's decision, he shall submit his appeal to the Prefet of Prefecture within 8 days after being informed of the decision.

In the event of the Commune Commission's refusal to make a decision within fifteen days after it has received the request, the applicant has seven days to appeal to the Prefet against the refusal to decide.

The Prefet shall make a decision on the appeal not later than one month from the time the appeal was registered at

the Prefecture. If, after one month, no decision has been made by the Prefet or if his decision does not satisfy the person appealing, the latter may submit the case to the judicial authority.

**Article 26:**

A register book shall be held in the Prefet's Secretariat for recording all the appeals regarding decisions made by the Communal Commission responsible for the abandoned land property.

1. The identity of the person appealing;
2. The date on which the appeal was received;
3. A summary of reasons/proofs on which the person bases his appeal;
4. The date on which the appealing person was informed of the decision made by the Commission;
5. The date of the Prefet's decision on the appeal as well as its contents.





## National Housing Rights Legislation



### **Seychelles** Constitution (1993)

#### Article 34

The State recognizes the right of every citizen to adequate and decent shelter conducive to health and well-being and undertakes either directly or through or with the co-operation of public or private organizations to facilitate the effective realization of this right.

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### Uganda Land Act of 1998

#### Sec. 32

- (1) Any decision taken in respect of land held under customary tenure, whether in respect of land held individually or communally shall be in accordance with the custom, traditions and practices of the community, except that a decision which denies women or children or persons with disability access to ownership, occupation or use of any land or imposes conditions which violate articles 33, 34 or 35 of the Constitution on any ownership, occupation or use of any land shall be null and void. [\(a\)](#)



## National Housing Rights Legislation



### **United Republic of Tanzania**

#### Land Act No. 4 (1999) and Village Land Act No. 5 (1999)

[The Land Act and the Village Land Act together provide the basic law in relation to the management and administration of land, settlement of disputes and related matters. Implementation of the Land laws will give rise to the need to inform all stakeholders about their rights and obligations, so that they can effectively participate in their implementation. The Village Land Act 1999 also creates opportunities of collective land ownership for pastoralists.]



## National Housing Rights Legislation



### **Zambia** Constitution (1991)

#### Article 11 [Fundamental Rights and Freedoms]

It is recognized and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, color, creed, sex or marital status, but subject to the limitations contained in this Part, to each and all of the following, namely: ...

- (d) protection for the privacy of his home and other property and from deprivation of property without compensation;

and the provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

#### Article 17 [Privacy of Home and Other Property]

- (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.



## National Housing Rights Legislation



**Angola**  
Constitution (1992)

### Article 44

The State shall guarantee the inviolability of the home and the secrecy of correspondence, with limitations especially provided for by law.



## National Housing Rights Legislation



### Cameroon

Decree No. 77/140 (1977)

[Establishes the Cameroon Housing Loan Company: this organization provides financial support for any project designed to promote housing. For this purpose, it is authorized: (a) To finance the provision of services to land earmarked for the construction of low-income housing; (b) To seek and invest the funds required for property and development companies, as well as for the implementation of any low-income housing programme which falls under the objectives of the plan and meets certain specifications; (c) To accept the savings of natural or legal persons for the purpose of facilitating property ownership. To that end the Crédit Foncier may, by means of endorsements, guarantees or discounts, grant medium-term and long-term loans.] [\[1\]](#)



## National Housing Rights Legislation



### Cameroon

Order No. 79/PM (1981)

[Lays down procedures for allocating plots on estates for those within low incomes. Under this Order, persons fulfilling the following conditions may apply for a serviced plot within such an estate: They must not possess any immovable property in the town where the estate is located at the time of acquisition of the plot; They must undertake to occupy the dwelling thus constructed themselves; They must have a monthly income which does not exceed the ceiling laid down in the applicable regulations and which entitles them to a housing loan.] <sup>(54)</sup>



No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### Democratic Republic of Congo Constitution (1992)

#### Article 34(1)

The State is the guarantor of public health. Every citizen shall have the right to a level of life sufficient to assure his health, his well-being and that of his family, notably food, clothing, shelter, medical care as well as necessary social services.



## National Housing Rights Legislation



### Equatorial Guinea Constitution (1982)

#### Article 20

Every person enjoys the following rights:

- (13) The right to a standard of living which ensures health, nutrition, education, clothing, housing, medical care and necessary social services.

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### Sao Tome and Principe Constitution (1975)

#### Article 48. Housing and Environment

- (1) All have the right to housing and to an environment of human life and the duty to defend it.
- (2) It is incumbent upon the state to plan and execute a housing policy inserted in the plans for zoning of the territory.



## National Housing Rights Legislation



### Algeria

Decree No. 85-212 (1985)

[“Given the extent of the illegal building problem, regulatory measures have been taken to regularize the situation where possible [this decree] determining the conditions of regularization, with respect to their rights of disposal and occupancy, of the situation of the effective occupiers of public and private land subject to title and/or supporting structures not in compliance with the regulations in force.”] [link](#)





## National Housing Rights Legislation



**Egypt**  
Constitution (1971)

### Article 44

Homes shall have their sanctity and they may not be entered or inspected except by a causal judicial warrant as prescribed by the law.



## National Housing Rights Legislation



### Libyan Arab Jamahiriya

Resolution of the People's Congresses In Their Third Regular Session for 1980, Endorsed by the General People's Congress In Its Sixth Regular Session (1981)

#### Section 4.

Revision of the General Housing Policy and the creation of a Special Housing Bank. The Basic People's Congresses has decided the following:

- (a) Formulation of a Housing Policy whereby the direct role of society would be limited to providing free housing for those unable to earn a living and to construct public project housing units for those unable to participate in the new housing associations.
- (b) Establishment of a Real Estate Investment and Saving Bank to make loans available to citizens and to real estate business. The bank will be a fundamental instrument in providing housing to the citizen who must play a direct and active role in financing the construction of his house and carry out his obligations resulting from obtaining the loan and the ownership of the house.

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### Sudan The Civil Code (1984)

[Article 560(1) stipulates that anyone who reclaims derelict land by building thereon is more entitled to it than others.

Article 560(2) stipulates that anyone who reclaims derelict land for essential construction purposes is the most entitled to benefit therefrom. However, at locations where development is planned and regulated, construction is not permitted in certain zones designated by the competent authority, and irregular development activities are prohibited, without the consent of the authority. Such zones must be demarcated in a clear and unequivocal manner and must pay due regard to the right of citizens to essential housing, as well as the State's obligation to promote orderly construction in accordance with a carefully studied plan.

Article 560(3) stipulates that a registered usufruct is like registered title to property and cannot be expropriated except in the public interest and in return for fair compensation depending on the type of usufruct and the real extent of its exploitation.

Article 560(4) stipulates that a usufruct which is deemed to be legitimate in accordance with the provisions of the Code, even if unregistered, is protected by law, within the limits of the actual use, and cannot be expropriated except in the public interest and in return for fair compensation.

Article 560(6) stipulates that, for purposes of the regulation and exploitation of land use, the central or regional authorities or the authorities at the national capital, as appropriate, shall take measures to demarcate, survey, level and register land, which they shall be empowered to divide into plots of equal or differing areas for uses that be regulated in a manner conducive to the assurance of a decent life for the population of each district and also for the holders of legitimate usufructs.

Article 561(b) grants usufructs in respect to agricultural land in order to encourage low-income families to settle and exploit the land for the benefit of the family or in the public interest.

Article 563 grants usufructs in respect of land and residential property on the following conditions:

- (a) The family must benefit whenever possible and feasible;
- (b) A usufruct granted in respect of residential land should not be less than 200m<sup>2</sup> in urban areas or 400m<sup>2</sup> in villages and rural areas.
- (c) Housing should preferably be situated in salubrious areas characterized by their clean air and natural environment befitting human life.] [\[10\]](#)



## National Housing Rights Legislation



**Sudan**

Constituent Assembly Procedure Regulations (1987)

### Article 25.

The right of ownership shall be guaranteed to citizens and associations as organized by law and such property as organized by law and shall not be acquired or appropriated save for public interest and in consideration of fair compensation.

### Article 30.

Residences shall be inviolable and shall not be searched or entered save with the consent of their occupants and as in such conditions and procedures as may be specified by law.

### Article 44.

The Housing Committee is concerned with the following:

- (1) Study of national plans in the field of housing and building planning and investment in real estate;
- (2) Consideration of the legislation relating to housing and land distribution;
- (3) Discussion of problems relating to the phenomenon of illegal dwellings and the negative results of that and finding solutions and alternatives for the same.



## National Housing Rights Legislation



### Sudan

#### Decree 941 (May 1990)

[Decree 941 is Sudan's official law for dealing with internally displaced persons. Decree 941 provides some elements of due process with respect to forced evictions, including adequate notice, as well as requiring the provision of alternative accommodations with adequate services.]

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### **Lesotho** Constitution (1993)

#### Article 11. Right to respect for private and family life

(1) Every person shall be entitled to respect for his private and family life and his home.

#### Article 34. Economic opportunities

Lesotho shall adopt policies which encourage its citizens to acquire property including land, houses, tools and equipment; and shall take such other economic measures as the State shall consider affordable.



## National Housing Rights Legislation



**Namibia**  
Constitution (1990)

### Article 13. Privacy

- (1) No persons shall be subject to interference with the privacy of their home, correspondence or communications.



## National Housing Rights Legislation



### South Africa Constitution (1996)

#### Article 14. Privacy

Everyone has the right to privacy, which includes the right not to have their person or home searched;

#### Article 25. Property

- (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
- (2) Property may be expropriated only in terms of law of general application for a public purpose or in the public interest; and subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
- (3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including the current use of the property; the history of the acquisition and use of the property; the market value of the property; the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and the purpose of the expropriation.
- (4) For the purposes of this section the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and property is not limited to land.
- (5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
- (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
- (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
- (8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).
- (9) Parliament must enact the legislation referred to in subsection (6).

#### Article 26. Housing

- (1) Everyone has the right to have access to adequate housing.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

#### Article 27. Health care, food, water and social security

- (1) Everyone has the right to have access to health care services, including reproductive health care;
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
- (3) No one may be refused emergency medical treatment.

#### Article 28. Children

- (1) Every child has the right to ... shelter....
- (2) A child's best interests are of paramount importance in every matter concerning the child.

(3) In this section “child” means a person under the age of 18 years.



## National Housing Rights Legislation



### South Africa

#### Land Reform (Labour Tenants) Bill B94-95

##### Article 2. Deprivation of informal rights to land

- (1) Subject to the provisions of subsection (2), and the provisions of the Expropriation Act, 1975 (Act No. 63 of 1975), no person may be deprived of any informal right to land without his or her consent.
- (2) Where land is used on a communal basis, an informal right to such land may be disposed of in accordance with the custom and usage of that community: Provided that such custom and usage shall be deemed to include the principle that a decision to dispose of any such right may only be taken by a majority of the holders of such rights present or represented at a meeting convened for the purpose of considering such disposal and of which they have been given sufficient notice, and in which they have had a reasonable opportunity to participate.



## National Housing Rights Legislation



### South Africa

#### Restitution of Land Rights Act (1994) (Act No. 16106)

Act: To provide for the restitution of rights in land in respect of which persons or communities were dispossessed under or for the purpose of furthering the objects of any racially based discriminatory law; to establish a Commission on Restitution of Land Rights and a Land Claims Court; and to provide for matters connected therewith.

Whereas the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), provides for the restitution of a right in land to a person or community dispossessed under or for the purpose of furthering the objects of any racially based discriminatory law;

And Whereas legislation for this purpose is to be designed to promote the protection and advancement of persons, groups or categories of person disadvantaged by unfair discrimination, in order to promote their full and equal enjoyment of rights in land:

#### Section 2. Enforcement of claim for restitution

- (1) A person shall be entitled to enforce restitution of a right in land if -
  - (a) he or she is a person or community contemplated in section 121(2) of the Constitution or a direct descendant of such a person; and
  - (b) the claim for such restitution is lodged within three years after a date fixed by the Minister by notice in the Gazette.
- (2) The date contemplated in subsection (1), shall be a date not earlier than the earliest of the dates contemplated in section 43.
- (3) The date contemplated in section 121(2)(a) of the Constitution is 19 June 1913.

#### Section 3. Claims against nominees

Subject to the provisions of this Act a person shall be entitled to claim land title in land if such claimant or his, her or its antecedent -

- (a) was prevented from obtaining or retaining title to the claimed land because of a law which would have been inconsistent with the prohibition of racial discrimination contained in section 8(2) of the Constitution had that subsection been in operation at the relevant time; and
- (b) proves that the registered owner of the land holds title as a result of a transaction between such registered owner or his, her or its antecedents and the claimant or his, her or its antecedents, in terms of which such registered owner or his her or its antecedents held the land on behalf of the claimant or his, her or its antecedents.

#### Section 4. Establishment of Commission on Restitution of Land Rights

- (1) There is hereby established a commission to be known as the Commission on Restitution of Land Rights.

#### Section 10. Lodgement of claims

- (1) Any person or the representative of any community who is of the opinion that he or she or the community which he or she represents is entitled to claim restitution of a right in land as contemplated in section 121 of the Constitution, may lodge such claim, which shall include a description of the land in question, and the nature of the right being claimed, on the form prescribed for this purpose by the Chief Land Claims Commissioner under section 16.

#### Section 22. Land Claims Court

- (1) There shall be a court of law to be known as the Land Claims Court which, in addition to the powers contemplated in section 123 of the Constitution, shall have the power -
  - (a) to determine restitution of any right in land in accordance with this Act;
  - (b) to determine compensation in terms of this Act;
  - (c) in respect of a claim in terms of section 3, to determine the person entitled to ownership;

(d) to determine all other matters which require to be determined in terms of sections 121, 122 and 123 of the Constitution.

(2) The Court shall have jurisdiction throughout the Republic and shall have all the ancillary powers necessary or reasonably incidental to the performance of its functions, including the power to grant interlocutory orders and interdicts. ...

### Section 33. Factors to be taken in account by court

In considering its decision in any particular matter, excluding the review of a decision in terms of section 15, the Court shall, in addition to the matters referred to in section 121, 122 and 123 of the Constitution, have regard to the following factors:

- (a) The desirability of providing for restitution of rights in land or compensation to people who were dispossessed of their rights in land as a result of or in pursuance of racially based discriminatory laws;
- (b) the desirability of remedying past violations of human rights;
- (c) the requirements of equity and justice;
- (d) the desirability of avoiding major social disruption;
- (e) any provision which already exists, in respect of the land in question in any matter, for that land to be dealt with in a manner which is designed to achieve the goals contemplated in section 8(3)(a) of the Constitution;
- (f) any other factor which the Court may consider relevant and consistent with the spirit and objects of the Constitution and in particular the provisions of section 8 of the Constitution.



No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### **Burkina Faso** Constitution (1991)

#### Article 18

Education, instruction, formation, employment, social security, sport, housing, leisure, health, protection of motherhood and of infancy, assistance to the aged or handicapped persons and in social cases, artistic and scientific creation shall constitute the social and cultural rights recognized by the present Constitution which aims to promote them.



## National Housing Rights Legislation



### **Cape Verde** Constitution (1992)

#### Article 10 (International Relations)

1. The State of Cape Verde shall be guided in international relations by the principles of national independence, the respect for International Law and Human Rights, the equality amongst States, the non-intervention in the internal affairs of other States, the reciprocity of advantages, the cooperation with all other peoples and peaceful coexistence.

#### Article 66 (Right to private property)

1. Everyone shall have the right to private property, as well as its transfer in life or as a result of death, in accordance with the Constitution and the law.
2. The right to inheritance shall be guaranteed.
3. The requisition or expropriation for public reasons shall only take place in accordance with the law and always against the payment of a just compensation.

#### Article 69 (Dwelling)

Everyone shall have the right to a dwelling which should have a minimum of dignity and, for this purpose, the State shall undertake to promote, gradually and in conformity with the national economic development, the creation of the appropriate institutional, legal and infrastructural conditions, foment and support the initiatives of the local communities and of the population and stimulate private housing development and the access to privately owned housing.

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### Ghana Constitution (1993)

#### Article 18

- (1) Every person has the right to own property either alone or in association with others.
- (2) No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of the rights or freedoms of others

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



**Mali**  
Constitution (1992)

### Article 16

Education, instruction, formation, work, housing, leisure, health and social protection shall constitute recognized rights.

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## National Housing Rights Legislation



### **Nigeria** Constitution (1989)

#### Article 16

(2) The State shall direct its policy toward ensuring:

- (d) that suitable and adequate shelter, food, water supply, reasonable national minimum living wage, old age and pensions, unemployment, and sick benefits and welfare for the disabled are provided for all citizens.



## National Housing Rights Legislation



**Nigeria**

Lagos State Law No. 9 (1976)

### Section 36.

- (9)(i) It shall be unlawful for any landlord to obtain an order for possession of any accommodation under this Edict by fraud, misrepresentation or concealment of any material fact
- (9)(ii) Where any landlord has obtained an order for possession of any accommodation under this Edict and upon an application made by summons by such tenant, the tribunal is satisfied that such order was obtained by fraud, misrepresentation or the concealment of any material fact, the tribunal shall order the landlord to pay reasonable compensation to such tenant.

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### Senegal Constitution (2001)

#### Preamble

The sovereign people of Senegal ... Affirm: their adherence to the Declaration of Human Rights of 1789 as well as to the international instruments adopted by the United Nations and the Organization of African Unity, in particular the Universal Declaration of Human Rights of 10 December 1948, the Convention on the Elimination of all Forms of Discrimination Against Women of 18 December 1979, the Convention on the Rights of the Child of 20 November 1989 and the African Charter on Human and Peoples' Rights of 27 June 1981;

#### Article 98

Treaties or agreements duly ratified shall, upon their publication, have an authority superior to that of the laws, subject, for each treaty and agreement, to its application by the other party.

#### Article 16

The home shall be inviolable. A house search may not be ordered except by a judge or another authority designated by law. Searches may be conducted only in the form prescribed by these authorities. Measures impairing or restricting the inviolability of the home may be taken only in order to provide against a common danger or to protect persons in danger of death. Such measures may also be taken, pursuant to law, in order to protect public order against impending threat and especially to combat the risks of epidemics or to protect youth in danger.

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## National Housing Rights Legislation



**China**  
Constitution (1982)

### Article 26(1)

... The State shall protect and improve the living environment and the ecological environment, and prevent and remedy pollution and other public hazards.

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### Democratic People's Republic of Korea Constitution (1972)

#### Article 25(3)

The State shall provide all working people with every condition for obtaining food, clothing and housing.

#### Article 28

The State increases the role of the country and strengthens its guidance and assistance to the countryside in order to eliminate the difference between town and country and the class distinction between the working class and peasantry. The state undertakes the building of production facilities of the cooperative farms and modern houses in the countryside at its expense.

#### Article 69

The State provides functional modern houses and hostels for the working people. The State builds modern rural houses at its expense and offers them free for the use of co-operative farmers.

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### **Mongolia** Constitution (1992)

#### Article 10 [Foreign Policy, Treaties]

- (1) Mongolia adheres to the universally recognized norms and principles of international law and pursues a peaceful foreign policy.
- (2) Mongolia fulfills in good faith its obligations under international treaties to which it is a Party.
- (3) The international treaties to which Mongolia is a Party become effective as domestic legislation upon the entry into force of the laws on their ratification or accession.

#### Article 16

- (13). Privacy of citizens, their families, correspondence, and homes are protected by law.



## National Housing Rights Legislation



**Republic of Korea**  
Constitution (1948)

### Article 35

- (3) The State shall endeavour to ensure comfortable housing for all citizens through housing development policies and the like.



## National Housing Rights Legislation



**Republic of Korea**

The Housing Construction Promotion Act (1972)

### Article 1.

The purpose of this act shall be to provide stability to the residential life of citizens who do not own their own homes, to provide for the construction and supply of dwelling units, and to raise housing funds to bring about the purpose of this Act.

### Article 2.

The State shall plan and put into actions measures necessary to ensure the stability and improvement of citizens' residential lives.



## National Housing Rights Legislation



**Republic of Korea**

The Rental Housing Construction Promotion Act (1984)

### Article 1.

The Act aims at defining actions necessary to assure housing for the people by providing for the construction and supply of rental housing.



## National Housing Rights Legislation



### Republic of Korea

#### Residence Lease Protection Act (1981)

[The Residence Lease Protection Act prohibits landlords from evicting tenants by force. Also, this Act mandates just compensation for renters in case of eviction. The Act was recently amended to extend the lease period to two years unless otherwise agreed upon between the two parties. This amendment reduces evictions considerably.] [↗](#)



## National Housing Rights Legislation



**Afghanistan**  
Constitution (1990)

### Article 17

The state shall promote construction to provide state and cooperative housing and help in the construction of private houses.



## National Housing Rights Legislation



**Bangladesh**  
Constitution (1972)

### Article 15

It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing its citizens:

- (a) The provision of the basic necessities of life, including food, clothing, shelter, education and medical care.

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### India Land Acquisition Act (1894)

#### Section 3(f). Public Purpose

The expression “public purpose” includes —

- i. the provision of village sites, or the extension, planned development or improvement of existing village sites.
- ii. the provision of land for town or rural planning;
- iii. the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned.
- iv. the provision of land for a corporation owned or controlled by the State.
- v. the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason; of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State.
- vi. the provision of land for the carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860) or under any corresponding law for the time being in force in a State, or a cooperative society within the meaning of any law relating to cooperative Societies for the time being in force in any State.
- vii. the provision of land for any other scheme of development sponsored by Government or with the prior approval of the approval of the appropriate Government, by a local authority;
- viii. the provision of any premises or building for locating a public office, but does not include acquisition of land for Companies.

#### Section 4. Publication of preliminary notification, and powers of officers thereupon

1. Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose (or for a Company) a notification to that effect shall be published in the Official Gazette, and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. (The last of the dates of such publication and the giving of such public notices, being hereinafter referred to as the date of the publication and notification.)
2. Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen — to enter upon and survey and take levels of any land in such locality, to dig or bore into the sub soil; to do all other acts necessary to ascertain whether the land is adopted for such purpose; to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made there on; to make such levels, boundaries and line by placing marks and cutting trenches; and where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle.
3. Provided that no person shall enter into any building or upon any enclosed court of garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days’ notice in writing of his intention to do so.

#### Section 6. Declaration that land is required for a public purpose

Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied after considering the report, if any, made under section 5A, sub section (2) that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary, to such Government or of some officer duly authorized to certify its orders (an different declarations may be made from time to time in respect of different parcels of any land covered by the same notifications under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (whenever required under section 5A, sub-section (2).



## National Housing Rights Legislation



### India

#### The Slum Areas (Improvement and Clearance) Act (1956)

##### Section 3. Declaration of Slum Areas

1. Where the competent authority upon report from any of its officers or other information in its possession is satisfied as respects any area that the buildings in that area —
  - (a) are in any respect unfit for human habitation; or
  - (b) are by reason of dilapidation, overcrowding, faulty arrangement and design of such buildings, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health or morals.

It may by notification in the Official Gazette, declare such area to be a slum area.

2. In determining whether a building is unfit for human habitation for the purposes of this Act, regard shall be had to its condition in respect of the following matters, that is to say —
  - (a) repair;
  - (b) stability;
  - (c) freedom from damp;
  - (d) natural light and air;
  - (e) water supply;
  - (f) drainage and sanitary conveniences;
  - (g) facilities for storage, preparation and cooking of food and for the disposal of waste water, and the building shall be deemed to be unfit as aforesaid if and only if it is so far defective in one or more of the said matters that it is not reasonably suitable for occupation in that condition.

##### Section 5. Enforcement of notice requiring execution of works of improvement

1. If a notice under section 4 requiring the owner of the building (or of the land on which the building stands, as the case may be) to execute works of improvement is not complied with, then, after the expiration of the time specified in the notice the competent authority may itself do the works required to be done by the notice.
2. All expenses incurred by the competent authority under this section together with interest at such rate as the Central Government may by order fix, from the date when a demand for the expenses is made until payment, may be recovered by the competent authority from the owner of the building (or of the land on which the building stands, as the case may be) as arrears of land revenues:

Provided that if the owner proves that he —

- a. is receiving the rent merely as agent or trustee for some other person; and
- b. has not in his hands on behalf of that other person sufficient money to satisfy by the whole demand of the authority.

His liability shall be limited to the total amount of the money which he has in his hands as aforesaid.

##### Section 19. Proceedings for eviction not to be taken without permission of competent authority

1. Notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the competent authority —
  - a. institute, after the commencement of the Slum Area (Improvement and Clearance) Amendment Act, 1964 (43 of 1964) any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in a slum area; or
  - b. where any decree or order is obtained in any suit or proceeding institute before such commencement for the eviction of a tenant from any building or land in such area, execute such decree or order.
2. Every person desiring to obtain the permission referred to in subsection (1) shall make an application in writing to the competent authority in such form and containing such particulars as may be prescribed.

3. On receipt of such application, the competent authority, after giving an opportunity to the parties of being heard and after making such summary inquiry into the circumstances of the case as it thinks fit, shall by order in writing, either grant or refuse to grant such permission.
4. In granting or refusing to grant the permission under sub-section (3), the competent authority shall take into account the following factors, namely:
  - a. whether alternative accommodation within the means of the tenant would be available to him if he were evicted;
  - b. whether the eviction is in the interest of improvement and clearance of the slum areas;
  - c. such other factors, if any, as may be prescribed.
5. Where the competent authority refuses to grant the permission, it shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the applicant.



## National Housing Rights Legislation



**India**

### Urban Land (Ceiling and Regulation) Act (1976)

#### Preamble.

[T]he Urban Land (Ceiling and Regulation) Act, 1976 provides for the imposition of a ceiling on vacant land in urban agglomerations and the acquisition of such land in excess of the ceiling limit to regularize the construction of buildings on this land and for matters connected therewith with a view to preventing the concentration of urban land in the hands of a few persons, and speculation and profiteering, with a view to bring about equitable distribution of urban lands to subserve the common good.

#### Section 3. Persons not entitled to hold vacant land in excess of the ceiling limit:

Except as otherwise provided in this Act, on and from the commencement of this Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit, in the territories to which this Act applies under sub-section (2) of Section 1.

#### Section 10. Acquisition of vacant land in excess of ceiling limit

As soon as may be after the service of the statement under Section 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that —

- i. such vacant land is to be acquired by the concerned State Government; and
- ii. the claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land.



## National Housing Rights Legislation



**India**

Delhi Development Act (1957)

### Section 15. Compulsory Acquisition of Land

- (1) If in the opinion of the Central Government, any land is required for the purpose of development, or for any other purpose, under this Act, the Central Government may acquire such land under the provisions of the Land Acquisition Act, 1894 (1 of 1894).
- (2) Where any land has been acquired by the Central Government, the Government may, after it has taken possession of the land, transfer the land to the Authority or any local authority for the purpose which the land has been acquired on payment by the Authority or the local authority of the compensation awarded under that Act and of the charges incurred by the Government in connection with the acquisition.



## National Housing Rights Legislation



India

Madhya Pradesh Act No. 15 (1984) (Slum Dwellers Protection Act)

### Section 3. Settlement of Land

- (1) Notwithstanding anything contained in any law for the time being in force, the land occupied by a landless person in any urban area on the 10th day of April 1984 shall subject to the provisions of sub-section (2) be deemed to have been settled in his favour on the said date.
- (2) The Authorized Officer may either settle the land in actual occupation of the landless person not exceeding 50 sqr. metres in leasehold rights in his favour any other land up to 50 sqr. metres.
- (3) The leasehold rights accrued under sub-section (1) shall not be transferable by sub-lease or in any other manner whatsoever except by inheritance.
- (4) If the landless person to whom leasehold rights have accrued in respect of any land under this Act, transfers such land on contravention of the provisions of sub-section (3), the following consequences shall ensue, namely —
  - (i) the lease shall stand cancelled on the date of such transfer;
  - (ii) such transfer shall be null and void;
  - (iii) no leasehold rights shall accrue to the transferee in respect of such land.

### Section 4: Restoration of Possession

- (1) If any landless person to whom leasehold rights have accrued in the land under section 3 is dispossessed from that land or any part thereof otherwise than in due course of law, the Authorized Officer shall on an application made to him by the said landless person within six months from the date of dispossession restore such possession...

### Section 5: Penalty

- (1) Any person who — (i) wrongfully dispossesses or attempts to dispossess an occupier of a dwelling house; or (ii) recovers or attempts to recover rent in any manner from an occupier of dwelling house — shall be punished with rigorous imprisonment which shall not be less than three months.



## National Housing Rights Legislation



### Iran (Islamic Republic of) Constitution (1979)

#### Article 3

In order to attain the objectives specified in article 2, the government of the Islamic Republic of Iran has the duty of directing all its resources to the following goals:

- (12) the planning of a correct and just economic system, in accordance with Islamic criteria, in order to create welfare, eliminate poverty, and abolish all forms of deprivation with respect to food, housing, work, health care, and the provision of social insurance for all.

#### Article 31

A suitable dwelling, according to need, is the right of every Iranian person and family. The government is responsible for laying the groundwork to accomplish this, with the first consideration given to those who are in need, in particular villagers and labourers.

#### Article 43

The economy of the Islamic Republic of Iran, with its objectives of achieving the economic independence of the society, uprooting poverty and deprivation and fulfilling human needs in the process of development while preserving human liberty, is based on the following criteria:

- (1) The provision of basic necessities for all citizens: housing, food, clothing, hygiene, medical treatment, education and the necessary facilities for the establishment of a family.



## National Housing Rights Legislation



**Iran**

First Economic, Social and Cultural Plan (1980)

### Article 1

- (11) In order to enable people to have access to low rental housing and to establish a basis for the construction of sufficient rental houses, the Government is bound to put legal facilities and necessary credits at the disposal of appropriate specialized and guild organizations, which are to be set up for this purpose within the framework of public companies and cooperatives.

### Article 6

- (4) [Provides for] establishing standards for the construction of urban and rural housing, appropriate production facilities and regional and development criteria; preparation of a legal system to increase the supply of residential units together with reduced area under construction; construction and supply of rented houses, extension of activities for the production of building materials.



No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



**Kyrgyzstan**  
Constitution (1993)

### Article 33

Citizens of the Kyrgyz Republic shall have the right to housing.

The State promotes the fulfillment of the right to housing by giving and selling state-owned housing, by encouragement of individual house building.

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### Nepal Constitution (1990)

#### Article 22

Except as provided by law, the privacy of the person, house, property, document, correspondence or information of anyone is inviolable.

#### Article 26

- (1) The State shall adopt a policy which is directed towards the upliftment of the standard of living of the general public through the development of the basic structures like public education, health, housing and employment of the general public of all the regions by making equitable distribution of investment of the economic resources for the balanced development in the various geographical region of the country.



## National Housing Rights Legislation



### **Pakistan** Constitution (1990)

#### Article 38

The State shall:

- (d) provide basic necessities of life such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment.



## National Housing Rights Legislation



### Pakistan

#### Sind Katchi Abadis Act (1987)

##### Section 11.

- (2) Subject to the provisions of the Act, the Authority shall exercise such powers and perform such functions as may be necessary for carrying out the purposes of the Act. Following functions are in Section 11(2) of the Act:
- i) implement policies formulated by Government for the development or improvement of the areas of the Katchi Abadis and regularization of such Katchi Abadis.
  - ii) Lay-down guidelines for the implementation of such policies by the concerned authorities;
  - iii) identify the Katchi Abadis or areas thereof which may be developed, improved or regularized under this Act and also identify the Katchi Abadis or areas which cannot be regularized as Katchi Abadis.
  - iv) arrange or carry out detailed physical surveys, census of occupants of the Katchi Abadis and prepare or cause to be prepared plans and amelioration plans, and designs of infrastructural works in connection with the regularization and development of the Katchi Abadis;
  - v) formulate development and financial programmes in respect of the Katchi Abadis and determine implementation strategy of such programmes;
  - vi) Oversee the operation of the fund;
  - vii) evict or cause to be evicted unauthorized persons or remove or cause to be removed encroachments from a Katchi Abadi or any area which is not regularisable as Katchi Abadis in accordance with the law for the time being in force;
  - viii) acquire, hold, control and administer, movable or immovable property or dispose of such property;
  - ix) prepare or cause to be prepared scheme or schemes and execute or cause to be executed such scheme or schemes.
  - x) undertake, where necessary, low cost housing and re-development schemes for resettlement of shiftees from the Katchi Abadis and the areas which are not regularisable as Katchi Abadis;
  - xi) enter into and perform contracts;
  - xii) incur expenditures for carrying out the purposes of this Act;
  - xiii) arrange civic amenities and civic services in the Katchi Abadis through the Councils or other concerned agencies;
  - xiv) take such steps as may be necessary or conducive to the attainment of the objects of the Authority.



## National Housing Rights Legislation



### **Sri Lanka** Constitution (1977)

#### Article 27

The State is pledged to establish in Sri Lanka a democratic socialist society, the objectives of which includes:

- (2) (c) The realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities.



## National Housing Rights Legislation



### Tajikistan

#### The Law of the Republic of Tajikistan on Forced Migrants (20 July 1994)

##### Article 11 - Safeguarding Security of the Forced Migrants on Their to Places of Permanent Residence

Organs of State power and administration are obliged to safeguard the security of the forced migrants on their return to their places of permanent residences as well as observation of their rights and lawful interests.

##### Article 12 - the Rights of Forced Migrants Upon Arrival in their Places of Permanent Residence

A forced migrant, after return to his place of permanent residence, has the right to:

- repossess the personal and real estate left by him under the circumstances foreseen by the Article 1 of the present law;
- receive a lump sum allowance or other cash benefit, the sum of which is determined by the Council of Ministers of the Republic of Tajikistan;
- receive credit on preferential terms to reconstruct and build new houses and outbuildings to replace what has been destroyed;

##### Article 13 - The Fund of Assistance to Forced Migrants

To ensure favourable material conditions and compensation of expenses on accommodation at new permanent places of residence in the territory of the Republic of Tajikistan and at the places of previous residence the Fund of Assistance to Forced migrants hereby is established within the Central Refugee Department of the Ministry of Labour and Employment of Population of the Republic of Tajikistan.

The Fund shall be formed on the basis of receipts from the State Budget of the Republic of Tajikistan, other states and international organizations on the basis of agreements and other documents concluded by the Republic of Tajikistan, receipts from province, town and district budgets, voluntary donations on the part of domestic and foreign enterprises, public organisations and individual persons.

##### Article 14 - Sources of Compensation of Expenses of Reception and Accommodation of Forced Migrants

Expenses on the part of the local State power and administration organs connected with reception and accommodation of forced migrants on their territory shall be reimbursed from republican budget of the Republic of Tajikistan and the fund of Assistance within the Central Refugee Department of the Ministry of Labour and Employment of Population of the Republic of Tajikistan.





## National Housing Rights Legislation



### Tajikistan

#### Resolution No. 542 of 22 August 1995 on Additional Measures Facilitating the Return of Refugees-Citizens of the Republic of Tajikistan and Forced Migrants to the Places of Permanent Residence and Their Social and Legal Protection

With the aim of activating efforts on returning refugees-citizens of the Republic of Tajikistan and forced migrants to the places of permanent residence, strengthening their social and legal protection and in accordance with the statement of the government delegation of the Republic of Tajikistan on the results of the fourth round of inter-Tajik talks in Almaty, the Government of the Republic of Tajikistan resolves;

1. The ministries departments of the Republic of Tajikistan, heads of oblasts, cities and rayons of the Republic of Tajikistan shall intensify the work of the organized return of the refugees and forced migrants to the places of permanent residence and their social and legal protection.
2. With the aim of efficiently solving the questions arising in connection with the return of refugees - citizens of the Republic of Tajikistan and forced migrants to the places of permanent residence, their social and legal protection a government commission shall be set up in accordance with the supplement.
4. With the aim of facilitating the earliest social and economic adaptation of the refugees-citizens of the Republic of Tajikistan and forced migrants returned to the places of permanent residence, the Ministry of Internal Affairs of the Republic of Tajikistan, hukumats of oblasts, cities and rayons of the Republic of Tajikistan in common with the agencies of the Procurator's Office of the Republic of Tajikistan shall:
  - immediately vacate illegally occupied dwellings owned or rented by the refugees-citizens of the Republic of Tajikistan and forced migrants in houses belonging to the State or communal housing fund and pass them to their rightful owners;
  - in case of the destruction or loss of the State-owned dwelling, provide out of turn an available dwelling space at his whereabouts in conformity with the standards in force in the Republic. According to the wish of the victims, in return for the dwelling, allot them a land plot for the construction of a dwelling house or give them a right to join a building cooperative out of turn.
6. The State Committee of the Republic of Tajikistan on Contracts and Trade, the Board of Tajikmatlubot shall provide persons from among refugees-citizens of the Republic of Tajikistan and forced migrants and forced migrants building their own houses with main types of building materials in the first instance according to the claims of thukumats.



## National Housing Rights Legislation



### Tajikistan

#### Special Law on the Return of Illegally Occupied Houses

[This law deals with housing that was illegally occupied during the conflict between the Government of Tajikistan and the United Tajik Opposition, which concluded with the signing of a Peace Accord in June 1997.]

No information on relevant legislative clauses is available from this country.

Should you have such information we would appreciate if you could forward this to [Housing.Policy@unhabitat.org](mailto:Housing.Policy@unhabitat.org)

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## National Housing Rights Legislation



### **Cambodia** Constitution (1993)

#### Article 31

The Kingdom of Cambodia shall recognise and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, and the Covenants and Conventions related to human rights, women's and children's rights.

#### Article 63

The State shall pay attention to market management and to helping ensure appropriate living conditions for people.  
<sup>(63)</sup>



## National Housing Rights Legislation



### East Timor Constitution (2002)

#### Section 9 (International law).

1. The legal system of East Timor shall adopt the general or customary principles of international law.
2. Rules provided for in international conventions, treaties and agreements shall apply in the internal legal system of East Timor following their approval, ratification or accession by the respective competent organs and after publication in the official gazette.
3. All rules that are contrary to the provisions of international conventions, treaties and agreements applied in the internal legal system of East Timor shall be invalid.

#### Section 37 (Inviolability of home and correspondence)

1. Any person's home and the privacy of his or her correspondence and other means of private communication are inviolable, except in cases provided for by law as a result of criminal proceedings.
2. A person's home shall not be entered against his or her will, except under the written order of a competent judicial authority and in the cases and manner prescribed by law.
3. Entry into any person's home at night against his or her will is clearly prohibited, except in case of serious threat to life or physical integrity of somebody inside the home.

#### Section 58 (Housing).

Everyone has the right to a house, both for himself or herself and for his or her family, of adequate size that meets satisfactory standards of hygiene and comfort and preserves personal intimacy and family privacy.



## National Housing Rights Legislation



### Indonesia

#### Basic Agrarian Law, Law No. 5 (1960) <sup>(a)</sup>

##### Article 2.

- (1) As per the basic regulation in Article 33(3) of the Constitution and subjects as mentioned in Article 1 on land, waters and air space including natural resources affected by development, managed by the State, as an entity of power for the entire population.
- (2) The management by the State as stated in paragraph 1 give authority to:
  - (a) arrange and to take care of the purpose, usage, preparation and maintenance and cultivation of the said land, water and air space;
  - (b) specify and put in order the law on the relationship between the people with the land, water and air space; and
  - (c) specify and put in order the law on the relationship between the people and the action of law with regards to land, water and air space.
- (3) The right derived from the management function of the said State as stated in paragraph 2 of this article is use to improve the community's prosperity, meaning happiness, safety and independence as defined by Indonesian sovereignty and the judicial system.

##### Article 4.

- (1) As per basic rights of authority from the State as stated in Article 2, it is confirmed that the presence of the different rights for the earth's surface which is the land, is to be given to and owned by the people, either personally or together with other people and also with judicial bodies.
- (2) The rights over the land mentioned in paragraph 1 of this Article gives the authority to use the said land and also the contours of the land and water and space necessary for the usage of the land in accordance with the limitations as per these laws and other eminent judicial regulations.

##### Article 16.

- (1) Rights on land and water as mentioned in Article 4 (1) are the following:
  - (a) Rights of ownership;
  - (b) Rights on initiative utilization;
  - (c) Rights on building use;
  - (d) Rights of usage;
  - (e) Rights of lease;
  - (f) Rights to clean the land;
  - (g) Rights to harvest the products of the land;
  - (h) Other rights, not included in the rights mentioned above but which have been stipulated under article 33 of the Constitution.





## National Housing Rights Legislation



### Indonesia

Law of the Republic of Indonesia, Law No.4 (1992) <sup>(2)</sup>

#### Article 5.

- (1) Every citizen has the right to occupy and/or enjoy and/or own a decent house in a healthy, safe, harmonious and orderly environment.
- (2) Every citizen has the obligation and responsibility to participate in the construction of real estate and residential areas.

#### Article 6.

- (1) Activities to construct houses or real estate are conducted by the owner of land title pursuant to the prevailing laws.
- (2) The construction of houses or real estates by a non-owner of land title may be conducted with approval of the owner of land title in a written agreement.

#### Article 7.

- (1) Every person or agency constructing a house or real estate is obliged:
  - (a) to comply with technical, ecological and administrative requirements;
  - (b) to monitor the environment affected by the impact on the basis of the environment monitoring plan;
  - (c) to manage the environment on the basis of the environment management plan.



## National Housing Rights Legislation



### Indonesia

#### Presidential Decree (No. 55 (1993)) Concerning Land Acquisition for the Development of Public Interest <sup>(5)</sup>

##### Article 2.

- (1) The provisions concerning land speculation in this Presidential Decree shall solely be used for the acquisition of land for the implementation of development in the public interest.
- (2) Land acquisition for development in the public interest by the government shall be carried out through the release or the conveyance of rights to land.
- (3) Land acquisition for purposes other than development in the public interest by the Government shall be carried out through sale and purchase, exchange, or any other method agreed voluntarily by the parties concerned.

##### Article 3.

The release or conveyance of a right to land for development in the public interest shall be carried out on the basis of the principle of honouring rights to land.

##### Article 4.

- (1) Land acquisition and plans to fulfil the need for land required for development in the public interest can only be implemented if the proposed plan for development in the public interest is in conformity with and based on the General Spatial Plan already in effect.
- (2) Land acquisition as defined in paragraph (1) in regions where no General Spatial Plan is in effect shall be based on the already effective regional spatial plan or city spatial plan.

...

##### Article 8.

The Land Acquisition Committee has the following tasks:

- (1) to investigate and prepare the inventory of the land, buildings, crops and other structures related to the land to which the rights will be released or conveyed;
- (2) to investigate the legal status of the land to which the rights will be released or conveyed and the supporting documents thereof;
- (3) to assess and propose the amount of compensation for the land to which the rights will be released or conveyed;
- (4) to provide the holder of the right to land with a clarification or information on the plan and purpose of the proposed land acquisition;
- (5) to hold deliberations between the holders of the rights to land and the Government Agency requiring the land for the purpose of determining the form and/or size of compensation;
- (6) to observe the transfer of compensation money to the holders of the rights to land, buildings, crops and other objects on the land;
- (7) to draw up a written report on the implementation on the release or conveyance of the right to land.

##### Article 9.

Land acquisition for the implementation of development in the public interest shall be carried out through deliberation between the parties concerned.

##### Article 10.

- (1) Deliberation shall be held directly between the holders of the right to the land concerned and the Government Agency requiring the land.
- (2) In case the number of land rights holders makes it impossible to organize effective deliberations, the deliberation as meant in paragraph (1) shall be held between the Land Acquisition Committee and the Government Agency requiring the land and representatives appointed from and by the land right holders,

who will act as attorneys of all the land rights holders.

(3) The deliberation as meant in paragraph (1) shall be led by the Chairman of the Land Release Committee.

#### Article 11.

The deliberation shall be carried out in the location indicated in the invitation letter.

#### Article 12.

Compensation in the context of land acquisition shall be given for:

- (a) land rights;
- (b) buildings;
- (c) crops;
- (d) other objects on the land.

#### Article 13.

Compensation can be provided in any of the following forms:

- (a) money;
- (b) land replacement;
- (c) resettlement;
- (d) any combination of two or more of the forms of compensation defined in items a, b and c; and
- (e) any other forms agreed by the parties concerned.

#### Article 14.

Compensation of land held under the right of Ulayat (traditional communal rights) shall be given in the form of public interest (i.e. buildings) or in any other form beneficial to the local community.

No information on relevant legislative clauses is available from this country.

Should you have such information we would appreciate if you could forward this to [Housing.Policy@unhabitat.org](mailto:Housing.Policy@unhabitat.org)



## National Housing Rights Legislation



### Lao People's Democratic Republic Constitution (1991)

#### Article 29

The right of Lao citizens in their bodies and houses are inviolable.

No information on relevant legislative clauses is available from this country.

Should you have such information we would appreciate if you could forward this to [Housing.Policy@unhabitat.org](mailto:Housing.Policy@unhabitat.org)

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## National Housing Rights Legislation



### Philippines Constitution (1987)

#### Article 13

- (1) Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good. To this end, the State shall regulate the acquisition, ownership, use and disposition of property and its increments.
- (9) The State shall by law, and for the common good, undertake, in co-operation with the private sector, a continuing programme of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centres and resettlement areas. It shall also promote adequate employment opportunity to such citizens. In the implementation of such programs the State shall respect the rights of small property owners.
- (10) Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner. No resettlement of urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be resettled.





## National Housing Rights Legislation



### Philippines

#### Comprehensive & Integrated Shelter Finance Act (1994) (Republic Act 7835)

#### Section 2.

Declaration of Policy: It is hereby declared a policy of the State to undertake, in cooperation with the private sector, a continuing program of urban and land reform and housing which will make available, at affordable cost, decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlements areas.

In recognition of the role of housing as catalyst of economic growth and development, it is hereby declared a state policy to strengthen, promote and support the component activities of housing production and finance.

#### Section 3.

Statement of objectives: Towards this end, the State shall:

- (a) Ensure continuous funding support to vigorously implement the government's programs for urban and rural housing, resettlement, the development of sites and services, and the renewal of blighted areas;
- (b) Enhance the capability of low-income groups to acquire decent and low-cost housing units through the introduction of support mechanisms and facilities which shall render affordable such acquisitions;
- (c) Enjoin the active participation of the local government units in the socialized housing programs through adequate measures for housing development in their respective areas;
- (h) Focus the government's full financial, technical and manpower resources in addressing the shelter needs of the lowest thirty percent (30%) of the population and with the private sector's cooperation, the higher socio-economic percentiles of the our country's population.

#### Section 4.

National Shelter Program Implementation: Consistent with the aforementioned policy and objectives, the Housing and Urban Development Coordinating Council (HUDCC), through the respective agencies, shall intensify the implementation of vital components of the national Shelter Program requiring government budgetary assistance as follows.

- (a) Resettlement Program: This program shall improve land acquisition and site development by the national Housing Authority [NHA] to generate serviced homelots for families displaced from sites earmarked for government infrastructure projects, those occupying danger areas such as water ways, esteros, railroad tracks and those qualified for relocation and resettlement assistance under Republic Act No. 7279. To sustain this program, the NHA shall engage in land banking activities to ensure availability of land.
- (b) Medium-Rise Public and Private Housing: This shall entail the construction of medium-rise residential buildings by the government and/or private developers in all high-density urban areas of the country to maximize the utilization of scarce, high-cost urban land, except in areas where there are existing arrangements on housing and/or land utilization prior to the effectivity of this Act. Low-income families and other beneficiaries as defined under Republic Act No. 7279 shall gain access to the program either through direct sale with homebuyers' financing assistance or through lease arrangement depending on the affordability of the intended beneficiaries.
- (e) Local Housing: To ensure the equitable distribution of housing benefits across the country, the NHA is hereby tasked to implement cost-recoverable socialized housing projects in selected urban and urbanizable areas in all congressional districts. Criteria for the selection of sites shall be formulated by the HUDCC and NHA pursuant to Republic Act No. 7279.



## National Housing Rights Legislation



### Philippines

#### Implementing Rules and Regulations to Ensure the Observance of Proper and Humane Relocation and Resettlement Procedures Mandated by the Urban Development and Housing Act 7279 of 1992

##### Section 4. Eviction and Demolition Pursuant to a Court Order

In cases of eviction and demolition pursuant to a court order involving underprivileged and homeless citizens, relocation shall be undertaken by the local government unit concerned and the National Housing Authority with the assistance of other government agencies within forty-five (45) days from the service of notice of final judgment by the court, after which period the order shall be executed: Provided further, That should relocation not be possible within the said period, financial assistance in the amount equivalent to the prevailing minimum daily wage multiplied by sixty (60) days shall be extended to the affected families by the local government unit concerned.

##### Section 6. Penalty Clause

Any person who violates any provision of R.A. 7279 shall be imposed the penalty of not more than six (6) years of imprisonment or a fine of not less than five thousand pesos (P5,000.00) but not more than one hundred thousand pesos (P100,000) or both at the discretion of the court; Provided, That if the offender is a corporation, partnership, association, or juridical entity, the penalty shall be imposed on the officer or officers of said corporation, partnership, association or juridical entity who caused the violation.

##### Section 7. Venue for Grievance

Complaints of violation of these Implementing Rules and regulations against local government executives shall be filed and prepared in accordance with section 671 of the Local Government Code of 1991 (R.A. 7160), thru the Department of Interior and Local Government.

Complaints against subordinate officials falling with the administrative jurisdiction of the local chief executives shall be filed with the office of the local chief executive concerned who shall cause to institute administrative or judicial proceedings against any subordinate official or employee who may have committed an offense in violation hereof of the Act itself.

In all instances, the aggrieved party may file his complaints directly with a court of competent jurisdiction pursuant to Section 45 of R.A. 7279.



## National Housing Rights Legislation



### Philippines

#### The Urban Development and Housing Act of 1992 (Republic Act No. 7279)

##### Section 2. Declaration of State Policy and Program Objectives:

It shall be the policy of the State to undertake, in cooperation with the private sector, a comprehensive and continuing Urban Development and Housing Program, hereinafter referred to as the Program, which shall:

- (a) Uplift the conditions of the underprivileged and homeless citizens, in urban areas and in resettlements areas by making available to them decent housing at affordable cost, basic services, and employment opportunities;
- (b) Provide for the rational use and development of urban land in order to bring about the following:
  - (1) Equitable utilization of residential lands in urban and urbanizable areas with particular attention to the needs and requirement of the underprivileged and homeless citizens and not merely on the basis market forces;
  - (2) Optimization of the use and productivity of land and urban resources;
  - (3) Development of urban areas conducive to commercial and industrial activities which can generate more economic opportunities for the people;
  - (4) Reduction in urban dysfunctions, particularly those that adversely affect public health, safety and ecology; and
  - (5) Access to land and housing by the underprivileged and homeless citizens;
- (c) Adopt workable policies to regulate and direct urban growth and expansion towards a dispersed urban net and more balanced urban-rural interdependence;
- (d) Provide for an equitable land tenure system that shall guarantee security of tenure to program beneficiaries but shall respect the rights of small property owners and ensure the payment of just compensation;
- (e) Encourage more effective peoples' participation in the urban development process; and
- (f) Improve the capability of local government units in undertaking urban development and housing programs and projects.

##### Section 3. Definition of Terms: For the purposes of this Act:

- (l) "On-site development" refers to the process of upgrading and rehabilitation of blighted and slum urban areas with a view to minimizing displacement of dwellers in said areas, and with provisions for basic services as provided for in Section 21 hereof;  
...
- (n) "Resettlement areas" refers to areas identified by the appropriate national agency or by the local government unit with respect to areas within its jurisdiction, which shall be used for the relocation of the underprivileged and homeless citizens;
- (o) "Security of tenure" refers the degree of protection afforded to qualified Program beneficiaries against infringement or unjust, unreasonable and arbitrary eviction or disposition by virtue of the right of ownership, lease agreement, usufruct and other contractual arrangements.  
...
- (t) "Underprivileged and homeless citizens" refers to the beneficiaries of this Act and to individuals or families residing in urban and urbanizable areas whose income or combined household income falls within the poverty threshold as defined by the National Economic and Development Authority and who do not own housing facilities. This shall include those who live in makeshift dwelling units and do not enjoy security of tenure.  
...

## Chapter II

### Section 7. Inventory of Lands

Within one (1) year from the effectivity of this Act, all city and municipal governments shall conduct an inventory of all lands and improvements thereon within their respective localities.

#### Section 9. Priorities in the Acquisition of Land

Lands for socialized housing shall be acquired in the following order:

- (a) Those owned by the Government or any of its subdivisions, instrumentalities, or agencies, including government-owned or -controlled corporations and their subsidiaries;
- (b) Alienable lands of the public domain;
- (c) Unregistered or abandoned and idle lands;
- (d) Those within the declared Areas for Priority Development, Zonal Improvement Program sites, and Slum Improvement and Resettlement Program sites which have not yet been acquired;
- (e) Bagong Lipunan Improvement of Sites and Services or BLISS sites which have not yet been acquired; and
- (f) Privately-owned lands.

Where on-site development is found more practicable and advantageous to the beneficiaries, the priorities mentioned in this section shall not apply. The local government units shall give budgetary priority to on-site development of government lands.

#### Section 10. Modes of Land Acquisition

The modes of acquiring lands for purposes of this Act shall include, among others, community mortgage, land swapping, land assembly or consolidation, land banking, donation to the Government, joint-venture agreement, negotiated purchase, and expropriation; Provided however, That expropriation shall be resorted to only when other modes of acquisition have been exhausted. Provided further, That where expropriation is resorted to, parcels of land owned by small property owners shall be exempted for purposes of this Act; Provided finally, That abandoned property, as herein defined, shall be reverted and escheated to the State in a proceeding analogous to the procedure laid down in Rule 91 of the Rules of Court.

For the purpose of socialized housing, government-owned and foreclosed properties shall be acquired by the local government units, or by the National Housing Authority primarily through negotiated purchase; Provided, That qualified beneficiaries who are actual occupants of the land shall be given the right of first refusal.

#### Section 11. Expropriation of Idle Lands

All idle lands in urban and urbanizable areas, as defined and identified in accordance with this Act, shall be expropriated and shall form part of the public domain. These lands shall be disposed of or utilized by the Government for such purposes that conform with their land use plans. Expropriation proceedings shall be instigated if, after the lapse of one (1) year following receipt of notice of acquisition, the owner fails to introduce improvements as defined in Section 3 (f) hereof, except in the case of force majeure and other fortuitous events. Exempted from this provision, however, are residential lands owned by small property owners or those the ownership of which is the subject of a pending litigation.

#### Section 14. Limitations on the Disposition of Lands for Socialized Housing

No land for socialized housing, including improvements or rights thereon, shall be sold, alienated, conveyed, encumbered or leased by any beneficiary of this Program except to qualified program beneficiaries as determined by the government agency concerned. ...

#### Section 15. Policy

Socialized housing, as defined in Sec. 3 hereof, shall be the primary strategy in providing shelter for the underprivileged and homeless. However, if the tenorial arrangement in a particular socialized housing program is in the nature of leasehold or usufruct, the same shall be transitory and the beneficiaries must be encouraged to become independent from the Program within a given period of time, to be determined by the implementing agency concerned.

#### Section 18. Balanced Housing Developments

The Program shall include a system to be specified in the Framework plan whereby developers of proposed subdivision projects shall be required to develop an area for socialized housing equivalent to at least twenty percent (20%) of the total subdivision area or total subdivision cost, at the option of the developer, within the same city or municipality, whenever feasible, and in accordance with the standards set by the Housing and Land Use Regulatory Board and other existing laws. ...

## Section 22. Livelihood Component

To the extent feasible, socialized housing and resettlement projects shall be located near areas where employment opportunities are accessible. The government agencies dealing with the development of livelihood programs and grant of livelihood loans shall give priority to the beneficiaries of the program.

## Section 26. Urban Renewal and Resettlement

This shall include the rehabilitation and development of blighted and slum areas and the resettlement of program beneficiaries in accordance with the provision of this Act. On-site development shall be implemented whenever possible in order to ensure minimum movement of occupants of blighted lands and slum areas. The resettlement of the beneficiaries of the program from their existing places of occupancy shall be undertaken only when on-site development is not feasible and after compliance with the procedure laid down in Section 28 of this Act.

## Section 29. Resettlement

Within two (2) years from the effectivity of this Act, the local government units, in coordination with the National Housing Authority, shall implement the relocation and resettlement of persons living in danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and in other public places such as sidewalks, roads, parks, and playgrounds. The local government units, in coordination with the National Housing Authority, shall provide relocation or resettlement sites with basic services and facilities and access to employment and livelihood opportunities sufficient to meet the basic needs of affected families.

## Section 28. Eviction and Demolition

Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:

- (a) When persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, river banks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds;
- (b) When government infrastructure projects with available funding are about to be implemented; or
- (c) When there is a court order for eviction and demolition.

In the execution of eviction or demolition order involving underprivileged and homeless citizens, the following shall be mandatory:

- 1) Notice upon the affected persons or entities at least thirty (30) days prior to the date of eviction or demolition;
- 2) Adequate consultations on the matter of resettlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated;
- 3) Presence of local government officials or their representatives during eviction or demolition;
- 4) Proper identification of all persons taking part in the demolition;
- 5) Execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;
- 6) No use of heavy equipment for demolition except for structures that are permanent and of concrete materials;
- 7) Proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures; and
- 8) Adequate relocation, whether temporary or permanent.

## Section 44. Moratorium on Eviction and Demolition

There shall be a moratorium on the eviction of all Program beneficiaries and on the demolition of their houses or dwelling units for a period of three (3) years from the affectivity of this Act: Provided, That the moratorium shall not apply to those persons who have constructed their structures after the affectivity of this Act and for cases enumerated in Section 28 hereof.

No information on relevant legislative clauses is available from this country.

Should you have such information we would appreciate if you could forward this to [Housing.Policy@unhabitat.org](mailto:Housing.Policy@unhabitat.org)

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## National Housing Rights Legislation



**Viet Nam**  
Constitution (1992)

### Article 58

Citizens have the rights to own legally-earned income, savings, homes, means of activities and production, capital and other assets of business or other economic organizations. The state protects citizens' legal rights to ownership and inheritance.

### Article 62

Citizens have the right to build homes according to a plan and law. The rights of tenants and landlords shall be protected by law.





## National Housing Rights Legislation



### **Viet Nam**

#### Decree on Housing (1991)

##### Article 2.

The State recognizes and protects the right to housing ownership by individuals and institutions.

##### Article 4.

The State encourages and facilitates the participation of all organizations and individuals in the maintenance and development of the housing space.



## National Housing Rights Legislation



### Armenia Constitution (1995)

#### Article 21

Everyone is entitled to privacy in his or her own dwelling. It is prohibited to enter a person's dwelling against his or her own will except under cases prescribed by law.

A dwelling may be searched only by court order and in accordance with legal procedures.

#### Article 28

Everyone is entitled to private property and inheritance. Foreign citizens and persons without citizenship shall not have the right to own land, except in cases prescribed by law. The owner may be deprived of private property only by a court in cases prescribed by law.

Private property may be alienated for the needs of society and the state only under exceptional circumstances, with due process of law, and with prior equivalent compensation.

#### Article 31

Every citizen is entitled to an adequate standard of living for himself or herself and his or her family, to adequate housing, as well as to the improvement of living conditions. The State shall provide the essential means to enable the exercise of these rights.

No information on relevant legislative clauses is available from this country.

Should you have such information we would appreciate if you could forward this to [Housing.Policy@unhabitat.org](mailto:Housing.Policy@unhabitat.org)



## National Housing Rights Legislation



**Bahrain**  
Constitution (1973)

### Article 9

(f) The state shall strive to provide housing for citizens with limited income.

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### Georgia Constitution (1991)

#### Preamble

The people of Georgia whose strong will is to establish a democratic social order, economic independence, a social and legal state, guarantee universally recognised human rights and freedoms, strengthen state independence and peaceful relations with other countries, universally announce this constitution based upon many centuries of state tradition and the main principles of the Constitution of 1921.

#### Article 6(2)

The legislation of Georgia corresponds with universally recognised norms and principles of international law. International treaties or agreements concluded with and by Georgia, if they are not in contradiction to the Constitution of Georgia, have prior legal force over internal normative acts.



## National Housing Rights Legislation



**Iraq**

Interim Constitution (2004)

### Article 23 [Other Rights, Rights of Foreigners]

The enumeration of the foregoing rights must not be interpreted to mean that they are the only rights enjoyed by the Iraqi people. They enjoy all the rights that befit a free people possessed of their human dignity, including the rights stipulated in international treaties and agreements, other instruments of international law that Iraq has signed and to which it has acceded, and others that are deemed binding upon it, and in the law of nations. Non-Iraqis within Iraq shall enjoy all human rights not inconsistent with their status as non-citizens.



No information on relevant legislative clauses is available from this country.

Should you have such information we would appreciate if you could forward this to [Housing.Policy@unhabitat.org](mailto:Housing.Policy@unhabitat.org)



## National Housing Rights Legislation



### Jordan Constitution (1984)

#### Article 10

Dwellings are inviolable and may not be entered except in the circumstances provided for by law and in the manner specified therein.

#### Article 11

No one shall expropriate the property of another person except in the public interest.

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### Lebanon Constitution (1926)

#### Article 14 [Home]

The citizen's place of residence is inviolable. No one may enter it except in the circumstances and manners prescribed by law.

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### **Syrian Arab Republic** Constitution (1973)

[Article 31 \[Home\]](#)

Homes are inviolable. They may not be entered or searched except under conditions specified by law.





## National Housing Rights Legislation



**Turkey**  
Constitution (1982)

### Article 56

Everyone has the right to live in a healthy and stable environment.<sup>(78)</sup>

### Article 57

The State shall take measures to meet the needs for housing, within the framework of a plan which takes into account the characteristics of cities and environmental conditions and supports community housing projects.

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### **Bulgaria**

Constitution (1991, as amended 2003 and 2005)

#### Article 17

- (1) The right to property and inheritance shall be guaranteed and protected by law.
- (2) Property shall be private and public.
- (3) Private property shall be inviolable.
- (4) The regime applying to the different units of state and municipal property shall be established by law.
- (5) Forcible expropriation of property in the name of state or municipal needs shall be effected only by virtue of a law, provided that these needs cannot be otherwise met, and after fair compensation has been ensured in advance.

#### Article 33

- (1) The home shall be inviolable. No one shall enter or stay inside a home without its occupant's consent, except in the cases expressly stipulated by law.
- (2) Entry or stay inside a home without the consent of its occupant or without the judicial authorities' permission shall be allowed only for the purposes of preventing an immediately impending crime or a crime in progress, for the capture of a criminal, or in extreme necessity.



## National Housing Rights Legislation



### **Bulgaria**

#### Restitution of Ownership of Nationalised Real Property Act of 1992

[Owners reinstated under the Restitution of Ownership of Nationalised Real Property Act (promulgated, SG No. 15/1992; amended, No. 28/1992) may claim their property right before the authority under Article 3 of the Transformation and Privatisation of State-Owned and Municipal Enterprises Act. However, such owners must make such a claim not later than two months after the publication of the decision to privatise the enterprise whereof their property is part, otherwise they shall only have the right to compensation.]



## National Housing Rights Legislation



### **Czech Republic** Constitution (1993)

#### Article 10 [Human Rights Treaties]

Ratified and promulgated international accords on human rights and fundamental freedoms, to which the Czech Republic has committed itself, are immediately binding and are superior to law.



## National Housing Rights Legislation



### **Czech Republic**

Law No. 116/1994 Coll.

[Law No. 116/1994 Coll. amends Law No. 87/1991 Coll. on out-of-court rehabilitation, as amended. Under this law, dealing specifically with agricultural land and property, entitled persons defined in section 4 were compensated, above all by the return of real estate (sect. 6), compensation for buildings which could not be yielded up (sect. 14) and compensation for animate and inanimate chattels (sect. 20).]





## National Housing Rights Legislation



### Czech Republic

Law No. 87/1991 Coll.

[On 2 February 1991, the Czech and Slovak Federal Government adopted Act 87/1991, which entered into force on 1 April 1991. It endorses the rehabilitation of Czech citizens who had left the country under communist pressure and lays down the conditions for restitution or compensation for loss of property. Under Section 3, subsection 1, of the Act, those who had their property turned into State ownership in the cases specified in Section 6 of the Act are entitled to restitution, but only if they are citizens of the Czech and Slovak Federal Republic and are permanent residents in its territory.

Under Section 5, subsection 1, of the Act, anyone currently in (illegal) possession of the property shall restate it to the rightful owner, upon a written request from the latter, who must also prove his or her claim to the property and demonstrate how the property was turned over to the State. Under subsection 2, the request for restitution must be submitted to the individual in possession of the property, within six months of the entry into force of the Act. If the person in possession of the property does not comply with the request, the rightful owner may submit his or her claim to the competent tribunal, within one year of the date of entry into force of the Act (subsection 4).]

NOTE: The Constitutional Court of the Czech Republic reached a decision on 12 July 1994 and issued a Finding that eliminates the requirement of permanent residence as a condition to exercise the right to claim property seized by the Communist government of Czechoslovakia during the period between 25 February 1948 and 31 December 1989. The requirement for the claimant to hold Czech citizenship, however, remains valid.



## National Housing Rights Legislation



**Hungary**  
Constitution (1997)

### Article 17

The Republic of Hungary sees to the wants of the needy through a long line of measures. [661](#)



## National Housing Rights Legislation



### **Poland** Constitution (1997)

#### Article 49

The freedom and privacy of communication shall be ensured. Any limitations thereon may be imposed only in cases and in a manner specified by statute.

#### Article 75

- (1) Public authorities shall pursue policies conducive to satisfying the housing needs of citizens, in particular combating homelessness, promoting the development of low-income housing and supporting activities aimed at acquisition of a home by each citizen.
- (2) Protection of the rights of tenants shall be established by statute.

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### **Romania** Constitution (1991)

#### Article 11 [International Treaties]

- (1) The Romanian State pledges to fulfil as such and in good faith its obligations as deriving from the treaties it is a party to.
- (2) Treaties ratified by Parliament, according to the law, are part of national law.



## National Housing Rights Legislation



### Russian Federation Constitution (1993)

#### Article 25

Dwellings are inviolable. No one is entitled to enter a dwelling against the wishes of the persons residing there except in cases prescribed by federal law or on the basis of a judicial decision.

#### Article 36

- (1) Citizens and their associations are entitled to hold land in private ownership.
- (2) Owners freely possess, utilize and dispose of land and other natural resources provided that this does not damage the environment and does not violate the rights and legitimate interests of others.
- (3) The conditions and procedure for the use of land are defined on the basis of federal law.

#### Article 40

- (1) Each person has the right to housing. No one may be arbitrarily deprived of housing.
- (2) Bodies of State power and bodies of local self-government encourage housing construction and create conditions for the exercise of the right to housing.
- (3) Housing is provided free or at affordable cost to low-income and other citizens indicated in the law who require housing from the state, municipal and other housing stocks in accordance with the norms prescribed by law.



## National Housing Rights Legislation



### Russian Federation

#### Law of the Russian Federation on Basic Principles of Federal Housing Policy Law (1992)

##### Preamble.

Determines basic principles of exercising [the] constitutional right of citizens of the Russian Federation for housing under new social and economic conditions, establishes [the] general basis for legal regulation of housing relationships ... [and] development of diverse forms of property and types of real estate in [the] housing sector.

The goal of federal housing policy is to ensure social guarantees for the right to citizens for housing, to accomplish construction and rehabilitation of state, municipal and private housing stock; to create conditions for the attraction of non-budget sources of financing...; to develop private property, to protect entrepreneurs and owners rights in the housing sector; and to promote competition in construction, repair and maintenance of the housing stock, manufacture of building materials, articles and goods to furnish houses.

##### Article 2.

Citizens of the Russian Federation have the right to housing. This right is exercised through providing residential units in state and municipal housing stock ... with the social norms of residential floor space, as well as through rent, purchase or construction of housing at one's own expense without any limit to floor space.

To citizens who are not provided with housing according to the established norms, the state renders assistance through developing construction of buildings of state and municipal stock intended for providing residential premises under [lease], as well as through the system of compensations (subsidies) and privileges on payment of construction, maintenance and repair of housing.

##### Article 15.

Where the government evicts a tenant in state housing for non-payment of rent or utilities, the government must provide the tenant with alternative living accommodations within the hostel norm.





## National Housing Rights Legislation



### **Russian Federation** The Housing Code (1986)

#### Article 91.

Tenants may be evicted from housing if the building they live in is scheduled for demolition, is deemed uninhabitable, is in danger of collapsing, or is scheduled to be converted to non-residential use.

#### Article 92.

In cases of eviction under these circumstances, the state must provide tenants with alternative living accommodations within the social norms of twelve square meters per person.



## National Housing Rights Legislation



### Slovakia Constitution (1992)

#### Article 20

- (1) Everyone has the right to own property. Property rights of all owners shall be uniformly construed and equally protected by law. The right of inheritance is guaranteed.
- (2) For the purposes of safeguarding the needs of the society, the interests of the general public, and the advancement of the national economy, the law shall establish certain property, (including that defined in article 4) as the exclusive property of the State, the municipality or specific corporate bodies. In addition, the law can specify property which may be owned only by individual citizens or corporations residing in the Slovak Republic.
- (3) Ownership limits. Property may not be misused to cause injury to another person or in contradiction to the public interests protected by law. The exercise of property rights must not be detrimental to the health of other people, wild life, cultural sites or the environment beyond the standards fixed by law.
- (4) Expropriation or restrictions on property rights shall be imposed only to the extent legally justified for the protection of the public interest and shall be justly compensated.

#### Article 21 [Inviolability of the Home]:

- (1) A person's home is inviolable. It must not be entered without the resident's consent.
- (2) A house search is admissible only in connection with criminal proceedings and only on the basis of the judge's written and substantiated order. The method of carrying out a house search will be set out in a law.
- (3) Other infringements upon the inviolability of one's home can be permitted by law only if this is inevitable in a democratic society in order to protect people's lives, health, or property, to protect the rights and liberties of others, or to ward off a serious threat to public order. If the home is used also for business or to perform some other economic activity, such infringements can be permitted by law also when this is unavoidable in meeting the tasks of public administration.

#### Article 39

- (1) Citizens shall be entitled to adequate material security in their old age, as well as in cases of disability, and death of the family's principal provider.
- (2) Any person suffering material hardship, shall have the right to such assistance as may be necessary to secure his or her fundamental standard of life.
- (3) Further details of rights defined in sections (1) and (2) of this Article shall be provided by law.

#### Article 11 [Human Rights]

International treaties on human rights and basic liberties that were ratified by the Slovak Republic and promulgated in a manner determined by law take precedence over its own laws, provided that they secure a greater extent of constitutional rights and liberties.



## National Housing Rights Legislation



### Ukraine Constitution (1996)

#### Article 47

- (1) Everyone has the right to housing. The State creates conditions that enable every citizen to build, purchase as property, or to rent housing.
- (2) Citizens in need of social protection are provided with housing by the State and bodies of local self-government, free of charge or at a price affordable for them, in accordance with the law.
- (3) No one shall be forcibly deprived of housing other than on the basis of the law pursuant to a court decision.

#### Article 48

- (1) Everyone has the right to a standard of living sufficient for himself or herself and his or her family that includes adequate nutrition, clothing and housing.

#### Article 55

- (1) Human and citizens' rights and freedoms [including the right to housing enumerating in Articles 47 and 48 of the Constitution] are protected by the court.
- (2) Everyone is guaranteed the right to challenge in court the decisions, actions or omission of bodies of state power, bodies of local self-government, officials and officers.
- (3) Everyone has the right to appeal for the protection of his or her rights to the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine.
- (4) After exhausting all domestic legal remedies, everyone has the right to appeal for the protection of his or her rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organisations of which Ukraine is a member or participant.
- (5) Everyone has the right to protect his or her rights and freedoms from violations and illegal encroachments by any means not prohibited by law.

#### Article 56

- (1) Everyone has the right to compensation, at the expense of the State or bodies of local self-government, for material and moral damages inflicted by unlawful decisions, actions or omission of bodies of state power, bodies of local self-government, their officials and officers during the exercise of their authority.

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### Denmark

Act on Housing Co-operatives (Act No. 441, 30 June 1993)

[For those groups who have difficulty in finding and retaining a home, the normal types of housing on offer are not adequate, and special schemes are needed for them. An example of a housing act which is aimed at solving the special needs of these groups is the Act on Housing Co-operatives....The Act is directly aimed at certain groups...these groups include the homeless, the mentally handicapped, the elderly, the disabled, people suffering from senile dementia, and refugees during the integration phase.] <sup>(33)</sup>



## National Housing Rights Legislation



### Denmark

#### Act on Housing for the Elderly (1987)

[According to the 1987 Act on Housing for the Elderly the local authorities may provide the number of dwellings for the elderly and the disabled which they consider suitable for meeting local wishes and needs.] <sup>(35)</sup>



## National Housing Rights Legislation



### Denmark

#### The Danish Rent Act

[The Danish Rent Act provides tenants certain rights with respect to rent increases, terms of notice, etc. In this connection it should be added that a large proportion of the socially disadvantaged population live as tenants in privately rented dwellings.] [\(30\)](#)



## National Housing Rights Legislation



**Denmark**

Law on Social Assistance

The law on social assistance places on the town councils the burden of supplying suitable housing.





## National Housing Rights Legislation



### **Estonia** Constitution (1992)

#### Article 32 [Property]

- (1) The property rights of everyone are inviolable and enjoy equal protection. No property shall be expropriated without the consent of the owner except in cases of public interest, in accordance with procedures determined by law, and in exchange for equitable and appropriate compensation. Anyone whose property has been expropriated without his or her consent shall have the right to appeal to a court and to contest the expropriation, and the nature and amount of compensation.

#### Article 33

The home is inviolable. No one's dwelling, real or personal property under his or her control, or place of employment shall be forcibly entered or searched, except in the cases and pursuant to procedure provided by law, to protect public order, health or the rights and freedoms of others, to prevent a criminal offence, to apprehend a criminal offender, or to ascertain the truth in a criminal proceeding.



## National Housing Rights Legislation



### Estonia

#### Law on the Fundamentals of Ownership Reform of 1991, as amended in 1993 and Land Reform Act of 1991, as amended in 1993

[Stipulates that the principal process of ownership reform will be the extensive restitution and compensation of unlawfully expropriated properties to their former owners or their heirs. Unlawful expropriation, according to the Acts, is interpreted rather broadly. Subject to restitution or compensation is unlawfully nationalized property, property collectivised and property expropriated in the course of unlawful repressions (as well as property abandoned due to the genuine danger of repression) during the period from June 16, 1940 until June 1, 1981. Restitution concerns a large number of buildings that are actually occupied by tenants (other than the former owner). In order to avoid social tensions, the restitution of such dwellings requires the former owner (or inheritor) to continue the rental contract with the present tenant for at least 3 years after the restitution (unless the tenant and former owner do not reach another agreement). Eligible persons entitled to claim restitution or compensation for property is rather broad and includes:

- 1) former owners if they lived permanently on the territory of Estonia in June 1991, or if they were citizens of the Republic of Estonia on June 16, 1940 (i.e. including present foreign residents);
- 2) heirs of the former owner. If there are none, the parents, spouse and children of the previous owner in equal shares, the spouse of the child of the previous owner, should the child of the previous owner be deceased; the grandchildren of the previous owner and other descendants, should their parent be deceased;
- 3) public and religious organizations, which operated until June 16, 1940, and whose statutory activity has not been terminated.]

No information on relevant legislative clauses is available from this country.

Should you have such information we would appreciate if you could forward this to [Housing.Policy@unhabitat.org](mailto:Housing.Policy@unhabitat.org)



## National Housing Rights Legislation



**Finland**  
Constitution (2000)

### Section 19(4)

The public authorities shall promote everyone's right to housing and the opportunity to arrange their own housing.

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### **Ireland** Housing Act of 1988

The local authorities are obliged to assess the importance of housing needs, to make a census of homeless persons and to set housing priorities.

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### Norway

#### The House Rents Act (1939)

[This Act regulates relations between landlords and tenants. The Act contains provisions giving the tenant the right to have a court consider the validity of a notice of termination of the rent contract (sec. 38). A court of law may declare the notice of termination of the rent contract invalid if it finds that adequate pertinent grounds are lacking, or if the notice of termination is unreasonable. Rent may also be reduced by a court if the courts finds it disproportionate to the value of the dwelling concerned (sec. 35). The tenant does not have the right to sublet the dwelling without the consent of the landlord, but the tenant does have the right to include his or her own or his or her spouse's close relatives in the household, (sec. 24).]<sup>(a)</sup>



## National Housing Rights Legislation



**Sweden**  
Constitution (1978)

### Art. 2, Sec. 1

The personal, economic and cultural welfare of the individual shall be fundamental aims of the activities of the community. In particular, it shall be incumbent upon the community to secure the right to work, to housing and to education and to promote social care and security, as well as a favourable living environment.



## National Housing Rights Legislation



### Sweden Swedish Rent Law

#### Section 2.

The rent agreement shall be established in writing, if the landlord or the tenant asks for it.

If the rent agreement is established in writing and someone with legality replaces the tenant, then this should be noted on the rent agreement if asked for.

#### Section 10.

The rent agreement becomes invalid if the apartment before the take over day becomes so destroyed that it cannot be used for the designated purpose. If the landlord is responsible for the incident or if he does not without delay leave the tenant a message about it, then the tenant has the right to compensation for damage.

If a public authority before the take over day issues a statement prohibiting the apartment to be used as a residence because the apartment's condition render the designated purpose, then the rent agreement ceases to exist, even if the decision has not yet obtained legal force. The tenant has the right to compensation for damage, if the condition that has preceded the decision derives from neglect from the landlord or if he does not without delay leave the tenant a message about the authority's decision.

#### Section 11.

If minor damage than what is stated in Section 10, first paragraph occurs on the apartment before the tenancy begins and the damage is not fixed when the apartment shall be taken over, or in other cases than what is stated in Section 13, the apartment on the take over day is not in the condition that the tenant has the right to demand, then can the tenant fix the damage on the landlord's account, if the landlord fails, after being told to fix the reparation as soon as it can be done. If the damage can not be repaired without delay or the landlord after being informed neglects to fix the damage as soon as possible, the tenant has the right to terminate the rent agreement. Termination can only be done if the damage is of considerable importance. After the damage has been repaired by the landlord the rent agreement can not be terminated. During the time period the apartment is imperfect, the tenant has the right to reasonable lowering of the rent.

The tenant has also the right to compensation for damage in cases that refers to the first paragraph, if the landlord can not show that the damage does not depend on his neglect.

The first and second paragraphs are also in force if an apartment for recreational purposes or for premises has been rented out in existing condition and it is not according to the local district's common understanding fully useful for its purpose and the tenant did not know about the damage when the lease was established or could not detect it through general observation.

#### Section 12.

If a public authority before the take over day issues a statement that restricts the tenant from using certain areas of the apartment because of the condition of those areas, or that the tenant in some other way will suffer in his right to use the apartment, then he has right to reasonable lowering of the rent. If the verdict affects a significant part of the right to use the apartment, then the tenant has the right to terminate the rent agreement even if the verdict does not yet have legal force. Section 10, second paragraph, second sentence applies to questions concerning compensation for damage.

#### Section 13.

If the rent agreement is for an apartment that was not completed when the rent agreement was established and if the apartment is still not ready when the take over date comes, the tenant has the right to reasonable lowering of the rent and the same right to terminate the rent agreement that is referred to in Section 11. Termination can be made before the agreed take over day, if it is obvious that the apartment will not be ready for the intended purpose.

The tenant has also right to compensation for damage, if the landlord does not show that the delay is not caused by his neglect.

#### Section 16.

The regulations in Sections 10-12, are also in force if,

- (1) the apartment is damaged during tenancy and the tenant is not responsible for the damage,
- (2) the landlord does not fulfill his responsibility for maintenance according to Section 15, the second paragraph.
- (3) hindrance or damage in the right to use the apartment in some other way occurs and it is not caused by the tenant, or
- (4) a public authority during the tenancy issues a statement according to Section 10, second paragraph or Section 12, and it is not caused by the tenant, however the regulations are not in force until the decision has been a guide.

If the rent agreement is for a tenement, the rent tribunal is allowed to impose a commandment to action upon the landlord so that he corrects the damage for cases that are discussed in first paragraph 1-3 or when the landlord does not fulfill his duty of maintenance referred to in Section 15, third paragraph and the tenant has submitted a petition for correction to be imposed.

The commandment to action which can be combined with a fine, shall state a specific time period under which the damage pointed out in the commandment to action shall have been corrected. The time period can be extended if specific circumstances exist and a request is made before the expiration date.

The landlord and the tenant can with binding effect enter an agreement that restricts the rights according to the first paragraph when hindrance or suffering in the use occurs because the landlord has arrangement for work to be done so that the apartment is restored to the condition agreement upon or so that customary maintenance of the apartment or the real estate in general or other work can be done that is stated in the agreement.

Petition for commandment to action can be directed toward the person who last has been granted or sought legal ratification of the property, even if this person has conveyed the real estate before the petition is made.

If the real estate is conveyed after the petition is made or if cases exist according to the fourth paragraph, then the Rules of the Courts regulations are in force and the object of dispute is transferred with a third party participation in a trial.

If a dispute regarding ownership is noticed in the land register a petition of commandment to action can be directed toward the party that possesses the real estate with claim of ownership.



## National Housing Rights Legislation



### United Kingdom

#### Homeless Persons Act (1977, as amended by the Housing Act of 1996)

#### PART VII: Homelessness

##### *Homelessness and threatened homelessness*

175.

- (1) A person is homeless if he has no accommodation available for his occupation, in the United Kingdom or elsewhere, which he-
  - (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,
  - (b) has an express or implied licence to occupy, or
  - (c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.
- (2) A person is also homeless if he has accommodation but-
  - (a) he cannot secure entry to it, or
  - (b) it consists of a moveable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it.
- (3) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.
- (4) A person is threatened with homelessness if it is likely that he will become homeless within 28 days.

176.

Accommodation shall be regarded as available for a person's occupation only if it is available for occupation by him together with-

- (a) any other person who normally resides with him as a member of his family, or
- (b) any other person who might reasonably be expected to reside with him.

References in this Part to securing that accommodation is available for a person's occupation shall be construed accordingly.

177.

- (1) It is not reasonable for a person to continue to occupy accommodation if it is probable that this will lead to domestic violence against him, or against-
  - (a) a person who normally resides with him as a member of his family, or
  - (b) any other person who might reasonably be expected to reside with him.

For this purpose "domestic violence", in relation to a person, means violence from a person with whom he is associated, or threats of violence from such a person which are likely to be carried out.

- (2) In determining whether it would be, or would have been, reasonable for a person to continue to occupy accommodation, regard may be had to the general circumstances prevailing in relation to housing in the district of the local housing authority to whom he has applied for accommodation or for assistance in obtaining accommodation.
- (3) The Secretary of State may by order specify-
  - (a) other circumstances in which it is to be regarded as reasonable or not reasonable for a person to continue to occupy accommodation, and
  - (b) other matters to be taken into account or disregarded in determining whether it would be, or would have been, reasonable for a person to continue to occupy accommodation.

178.

- (1) For the purposes of this Part, a person is associated with another person if-
- (a) they are or have been married to each other;
  - (b) they are cohabitants or former cohabitants;
  - (c) they live or have lived in the same household;
  - (d) they are relatives;
  - (e) they have agreed to marry one another (whether or not that agreement has been terminated);
  - (f) in relation to a child, each of them is a parent of the child or has, or has had, parental responsibility for the child.
- (2) If a child has been adopted or has been freed for adoption by virtue of any of the enactments mentioned in section 16(1) of the Adoption Act 1976, two persons are also associated with each other for the purposes of this Part if-
- (a) one is a natural parent of the child or a parent of such a natural parent, and
  - (b) the other is the child or a person-
    - (i) who has become a parent of the child by virtue of an adoption order or who has applied for an adoption order, or
    - (ii) with whom the child has at any time been placed for adoption.
- (3) In this section-
- "adoption order" has the meaning given by section 72(1) of the Adoption Act 1976;
  - "child" means a person under the age of 18 years;
  - "cohabitants" means a man and a woman who, although not married to each other, are living together as husband and wife, and "former cohabitants" shall be construed accordingly;
  - "parental responsibility" has the same meaning as in the Children Act 1989; and
  - "relative", in relation to a person, means-
    - (a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person's spouse or former spouse, or
    - (b) the brother, sister, uncle, aunt, niece or nephew (whether of the full blood or of the half blood or by affinity) of that person or of that person's spouse or former spouse,
- and includes, in relation to a person who is living or has lived with another person as husband and wife, a person who would fall within paragraph (a) or (b) if the parties were married to each other.

*General functions in relation to homelessness or threatened homelessness*

179.

- (1) Every local housing authority shall secure that advice and information about homelessness, and the prevention of homelessness, is available free of charge to any person in their district.
- (2) The authority may give to any person by whom such advice and information is provided on behalf of the authority assistance by way of grant or loan.
- (3) A local housing authority may also assist any such person-
  - (a) by permitting him to use premises belonging to the authority,
  - (b) by making available furniture or other goods, whether by way of gift, loan or otherwise, and
  - (c) by making available the services of staff employed by the authority.

180.

- (1) The Secretary of State or a local housing authority may give assistance by way of grant or loan to voluntary organisations concerned with homelessness or matters relating to homelessness.
- (2) A local housing authority may also assist any such organisation-
  - (a) by permitting them to use premises belonging to the authority,

- (b) by making available furniture or other goods, whether by way of gift, loan or otherwise, and
  - (c) by making available the services of staff employed by the authority.
- (3) A "voluntary organisation" means a body (other than a public or local authority) whose activities are not carried on for profit.

181.

- (1) This section has effect as to the terms and conditions on which assistance is given under section 179 or 180.
- (2) Assistance shall be on such terms, and subject to such conditions, as the person giving the assistance may determine.
- (3) No assistance shall be given unless the person to whom it is given undertakes-
  - (a) to use the money, furniture or other goods or premises for a specified purpose, and
  - (b) to provide such information as may reasonably be required as to the manner in which the assistance is being used.

The person giving the assistance may require such information by notice in writing, which shall be complied with within 21 days beginning with the date on which the notice is served.

- (4) The conditions subject to which assistance is given shall in all cases include conditions requiring the person to whom the assistance is given-
  - (a) to keep proper books of account and have them audited in such manner as may be specified,
  - (b) to keep records indicating how he has used the money, furniture or other goods or premises, and
  - (c) to submit the books of account and records for inspection by the person giving the assistance.
- (5) If it appears to the person giving the assistance that the person to whom it was given has failed to carry out his undertaking as to the purpose for which the assistance was to be used, he shall take all reasonable steps to recover from that person an amount equal to the amount of the assistance.
- (6) He must first serve on the person to whom the assistance was given a notice specifying the amount which in his opinion is recoverable and the basis on which that amount has been calculated.

182.

- (1) In the exercise of their functions relating to homelessness and the prevention of homelessness, a local housing authority or social services authority shall have regard to such guidance as may from time to time be given by the Secretary of State.
- (2) The Secretary of State may give guidance either generally or to specified descriptions of authorities.

*Application for assistance in case of homelessness or threatened homelessness*

183.

- (1) The following provisions of this Part apply where a person applies to a local housing authority for accommodation, or for assistance in obtaining accommodation, and the authority have reason to believe that he is or may be homeless or threatened with homelessness.
- (2) In this Part-
  - "applicant" means a person making such an application,
  - "assistance under this Part" means the benefit of any function under the following provisions of this Part relating to accommodation or assistance in obtaining accommodation, and
  - "eligible for assistance" means not excluded from such assistance by section 185 (persons from abroad not eligible for housing assistance) or section 186 (asylum seekers and their dependants).
- (3) Nothing in this section or the following provisions of this Part affects a person's entitlement to advice and information under section 179 (duty to provide advisory services).

184.

- (1) If the local housing authority have reason to believe that an applicant may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves-
  - (a) whether he is eligible for assistance, and



(b) if so, whether any duty, and if so what duty, is owed to him under the following provisions of this Part.

- (2) They may also make inquiries whether he has a local connection with the district of another local housing authority in England, Wales or Scotland.
- (3) On completing their inquiries the authority shall notify the applicant of their decision and, so far as any issue is decided against his interests, inform him of the reasons for their decision.
- (4) If the authority have notified or intend to notify another local housing authority under section 198 (referral of cases), they shall at the same time notify the applicant of that decision and inform him of the reasons for it.
- (5) A notice under subsection (3) or (4) shall also inform the applicant of his right to request a review of the decision and of the time within which such a request must be made (see section 202).
- (6) Notice required to be given to a person under this section shall be given in writing and, if not received by him, shall be treated as having been given to him if it is made available at the authority's office for a reasonable period for collection by him or on his behalf.

### *Eligibility for assistance*

#### 185.

- (1) A person is not eligible for assistance under this Part if he is a person from abroad who is ineligible for housing assistance.
- (2) A person who is subject to immigration control within the meaning of the Asylum and Immigration Act 1996 is not eligible for housing assistance unless he is of a class prescribed by regulations made by the Secretary of State.
- (3) The Secretary of State may make provision by regulations as to other descriptions of persons who are to be treated for the purposes of this Part as persons from abroad who are ineligible for housing assistance.
- (4) A person from abroad who is not eligible for housing assistance shall be disregarded in determining for the purposes of this Part whether another person-
  - (a) is homeless or threatened with homelessness, or
  - (b) has a priority need for accommodation.

#### 186.

- (1) An asylum-seeker, or a dependant of an asylum-seeker who is not by virtue of section 185 a person from abroad who is ineligible for housing assistance, is not eligible for assistance under this Part if he has any accommodation in the United Kingdom, however temporary, available for his occupation.
- (2) For the purposes of this section a person who makes a claim for asylum-
  - (a) becomes an asylum-seeker at the time when his claim is recorded by the Secretary of State as having been made, and
  - (b) ceases to be an asylum-seeker at the time when his claim is recorded by the Secretary of State as having been finally determined or abandoned.
- (3) For the purposes of this section a person-
  - (a) becomes a dependant of an asylum-seeker at the time when he is recorded by the Secretary of State as being a dependant of the asylum-seeker, and
  - (b) ceases to be a dependant of an asylum-seeker at the time when the person whose dependant he is ceases to be an asylum-seeker or, if it is earlier, at the time when he is recorded by the Secretary of State as ceasing to be a dependant of the asylum-seeker.
- (4) In relation to an asylum-seeker, "dependant" means a person-
  - (a) who is his spouse or a child of his under the age of eighteen, and
  - (b) who has neither a right of abode in the United Kingdom nor indefinite leave under the Immigration Act 1971 to enter or remain in the United Kingdom.
- (5) In this section a "claim for asylum" means a claim made by a person that it would be contrary to the United Kingdom's obligations under the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and the Protocol to that Convention for him to be removed from, or required to leave, the United Kingdom.

187.

- (1) The Secretary of State shall, at the request of a local housing authority, provide the authority with such information as they may require-
  - (a) as to whether a person is or has become an asylum-seeker, or a dependant of an asylum-seeker, and
  - (b) to enable them to determine whether such a person is eligible for assistance under this Part under section 185 (persons from abroad not eligible for housing assistance).
- (2) Where that information is given otherwise than in writing, the Secretary of State shall confirm it in writing if a written request is made to him by the authority.
- (3) If it appears to the Secretary of State that any application, decision or other change of circumstances has affected the status of a person about whom information was previously provided by him to a local housing authority under this section, he shall inform the authority in writing of that fact, the reason for it and the date on which the previous information became inaccurate.

*Interim duty to accommodate*

188.

- (1) If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they shall secure that accommodation is available for his occupation pending a decision as to the duty (if any) owed to him under the following provisions of this Part.
- (2) The duty under this section arises irrespective of any possibility of the referral of the applicant's case to another local housing authority (see sections 198 to 200).
- (3) The duty ceases when the authority's decision is notified to the applicant, even if the applicant requests a review of the decision (see section 202).

The authority may continue to secure that accommodation is available for the applicant's occupation pending a decision on a review.

189.

- (1) The following have a priority need for accommodation-
  - (a) a pregnant woman or a person with whom she resides or might reasonably be expected to reside;
  - (b) a person with whom dependent children reside or might reasonably be expected to reside;
  - (c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;
  - (d) a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster.
- (2) The Secretary of State may by order-
  - (a) specify further descriptions of persons as having a priority need for accommodation, and
  - (b) amend or repeal any part of subsection (1).
- (3) Before making such an order the Secretary of State shall consult such associations representing relevant authorities, and such other persons, as he considers appropriate.
- (4) No such order shall be made unless a draft of it has been approved by resolution of each House of Parliament.

*Duties to persons found to be homeless or threatened with homelessness*

190.

- (1) This section applies where the local housing authority are satisfied that an applicant is homeless and is eligible for assistance but are also satisfied that he became homeless intentionally.
- (2) If the authority are satisfied that the applicant has a priority need, they shall-
  - (a) secure that accommodation is available for his occupation for such period as they consider will give him a reasonable opportunity of securing accommodation for his occupation, and
  - (b) provide him with advice and such assistance as they consider appropriate in the circumstances in any

attempts he may make to secure that accommodation becomes available for his occupation.

- (3) If they are not satisfied that he has a priority need, they shall provide him with advice and such assistance as they consider appropriate in the circumstances in any attempts he may make to secure that accommodation becomes available for his occupation.

191.

- (1) A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.
- (2) For the purposes of subsection (1) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate.
- (3) A person shall be treated as becoming homeless intentionally if-
  - (a) he enters into an arrangement under which he is required to cease to occupy accommodation which it would have been reasonable for him to continue to occupy, and
  - (b) the purpose of the arrangement is to enable him to become entitled to assistance under this Part, and there is no other good reason why he is homeless.
- (4) A person who is given advice or assistance under section 197 (duty where other suitable alternative accommodation available), but fails to secure suitable accommodation in circumstances in which it was reasonably to be expected that he would do so, shall, if he makes a further application under this Part, be treated as having become homeless intentionally.

192.

- (1) This section applies where the local housing authority-
  - (a) are satisfied that an applicant is homeless and eligible for assistance, and
  - (b) are not satisfied that he became homeless intentionally, but are not satisfied that he has a priority need.
- (2) The authority shall provide the applicant with advice and such assistance as they consider appropriate in the circumstances in any attempts he may make to secure that accommodation becomes available for his occupation.

193.

- (1) This section applies where the local housing authority are satisfied that an applicant is homeless, eligible for assistance and has a priority need, and are not satisfied that he became homeless intentionally.

This section has effect subject to section 197 (duty where other suitable accommodation available).

- (2) Unless the authority refer the application to another local housing authority (see section 198), they shall secure that accommodation is available for occupation by the applicant.
- (3) The authority are subject to the duty under this section for a period of two years ("the minimum period"), subject to the following provisions of this section.

After the end of that period the authority may continue to secure that accommodation is available for occupation by the applicant, but are not obliged to do so (see section 194).

- (4) The minimum period begins with-
  - (a) if the applicant was occupying accommodation made available under section 188 (interim duty to accommodate), the day on which he was notified of the authority's decision that the duty under this section was owed to him;
  - (b) if the applicant was occupying accommodation made available to him under section 200(3) (interim duty where case considered for referral but not referred), the date on which he was notified under subsection (2) of that section of the decision that the conditions for referral were not met;
  - (c) in any other case, the day on which accommodation was first made available to him in pursuance of the duty under this section.
- (5) The local housing authority shall cease to be subject to the duty under this section if the applicant, having been informed by the authority of the possible consequence of refusal, refuses an offer of accommodation which the authority are satisfied is suitable for him and the authority notify him that they regard themselves as having discharged their duty under this section.

- (6) The local housing authority shall cease to be subject to the duty under this section if the applicant-
- (a) ceases to be eligible for assistance,
  - (b) becomes homeless intentionally from the accommodation made available for his occupation,
  - (c) accepts an offer of accommodation under Part VI (allocation of housing), or
  - (d) otherwise voluntarily ceases to occupy as his only or principal home the accommodation made available for his occupation.
- (7) The local housing authority shall also cease to be subject to the duty under this section if-
- (a) the applicant, having been informed of the possible consequence of refusal, refuses an offer of accommodation under Part VI, and
  - (b) the authority are satisfied that the accommodation was suitable for him and that it was reasonable for him to accept it and notify him accordingly within 21 days of the refusal.
- (8) For the purposes of subsection (7) an applicant may reasonably be expected to accept an offer of accommodation under Part VI even though he is under contractual or other obligations in respect of his existing accommodation, provided he is able to bring those obligations to an end before he is required to take up the offer.
- (9) A person who ceases to be owed the duty under this section may make a fresh application to the authority for accommodation or assistance in obtaining accommodation.



## National Housing Rights Legislation



### United Kingdom Housing Act (1985, as amended)

#### Section 9. Provision of Housing Accommodation

- (1) A local housing authority may provide housing accommodation -
  - (a) by erecting houses, or converting buildings into houses, on land acquired by them for the purposes of this Part, or
  - (b) by acquiring houses.
- (2) The authority may alter, enlarge, repair or improve a house so erected, converted or acquired.
- (3) These powers may equally be exercised in relation to land acquired for the purposes
  - (a) of disposing of houses provided, or to be provided, on the land, or
  - (b) of disposing of the land to a person who intends to provide housing accommodation on it.
- (4) A local housing authority may not under this Part provide a cottage with a garden of more than one acre.
- (5) Nothing in this Act shall be taken to require (or to have any time required) a local housing authority itself to acquire or hold any houses or other land for the purposes of this Part. (amendment under section 161 of the Local Government and Housing Act (1989)).

#### Section 22.

A local housing authority shall secure that in the selection of their tenants a reasonable preference is given to -

- (a) persons occupying insanitary or overcrowded houses;
- (b) persons have large families;
- (c) persons living under unsatisfactory housing conditions;
- (d) persons towards whom the authority are subject to a duty under section 65 to 68 (persons found to be homeless).

#### Section 58. (A) Homeless

- (1) A person is homeless if he has no accommodation in England, Wales or Scotland.
- (2) A person shall be treated as having no accommodation if there is no accommodation which he, together with any other person who normally resides with him as a member of his family or in circumstances in which it is reasonable for that person to reside with him—
  - (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court, or
  - (b) has an express or implied license to occupy, or in Scotland has a right or permission or an implied right or permission to occupy, or
  - (c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.
- (2A) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to occupy.
- (2B) Regard may be had, in determining whether it would be reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the district of the local housing authority to whom he has applied for accommodation or for assistance in obtaining accommodation.
- (3) A person is also homeless if he has accommodation but —
  - (a) he cannot secure entry to it, or
  - (b) it is probable that occupation of it will lead to violence from some other person residing in it or to threats of violence from some other person residing in it and likely to carry out the threats, or
  - (c) it consists of a movable structure, vehicle or vessel designed or adapted for human habitation and

there is no place where he is entitled or permitted both to place it and to reside in it.

(4) A person is threatened with homelessness if it is likely that he will become homeless within 28 days.

#### Section 59.

(1) The following have a priority need for accommodation —

- (a) a pregnant woman or a person with whom a pregnant woman resides or might reasonably be expected to reside;
- (b) a person with whom dependent children reside or might reasonably be expected to reside;
- (c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;
- (d) a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster.

(2) The Secretary of State may by order made by statutory instrument —

- (a) specify further descriptions of person as having a priority need for accommodation, and
- (b) amend or repeal any part of subsection (1).

(3) Before making such an order the Secretary of State shall consult such associations representing relevant authorities, and such other persons, as he considers appropriate.

(4) No order shall be made unless a draft of it has been approved by resolution of each House of Parliament.

#### Section 60.

(1) A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.

(2) A person becomes threatened with homelessness intentionally if he deliberately does or fails to do anything the likely result of which is that he will be forced to leave accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.

(3) For the purposes of subsection (1) or (2) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate.

(4) Regard may be had, in determining whether it would have been reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the district of the local housing authority to whom he applied for accommodation or for assistance in obtaining accommodation.

#### Section 61.

(1) References in this Part to a person having a local connection with the district of a local housing authority are to his having a connection with that district —

- (a) because he is, or in the past was, normally resident in that district, and that residence is or was of his own choice, or
- (b) because he is employed in that district, or
- (c) because of family associations, or
- (d) because of social circumstances.

(2) For the purposes of this section —

- (a) a person is not employed in a district if he is serving in the regular armed forces of the Crown;
- (b) residence in a district is not of a person's own choice if he becomes resident in it because he, or a person who might reasonably be expected to reside with him, is serving in the regular armed forces of the Crown.

(3) Residence in a district is not of a person's own choice for the purpose of this section if he, or a person who might reasonably be expected to reside with him, became resident in it because he was detained under the authority of an Act of Parliament.

(4) The Secretary of State may by order specify other circumstances in which —

- (a) a person is not to be treated for the purposes of this section as employed in a district, or
  - (b) residence in a district is not to be treated for those purposes as of a person's own choice.
- (5) An order shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Section 62.

- (1) If a person (an "applicant") applies to a local housing authority for accommodation, or for assistance in obtaining accommodation, and the authority have reason to believe that he may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves as to whether he is homeless or threatened with homelessness.
- (2) If they are so satisfied, they shall make any further inquiries necessary to satisfy themselves as to —
  - (a) whether he has a priority need, and
  - (b) whether he became homeless or threatened with homelessness intentionally;
 And if they think fit they may also make inquiries as to whether he has a local connection with the district of another local housing authority in England, Wales or Scotland.

#### Section 63.

Interim duty to accommodate in case of apparent priority need

- (1) If the local housing authority have reason to believe that an applicant may be homeless and have a priority need, they shall secure that accommodation is made available for his occupation pending a decision as a result of their inquiries under section 62.
- (2) The duty arises irrespective of any local connection which the applicant may have the district of another local authority.

#### Section 64.

- (1) On completing their inquiries under section 62, the local housing authority shall notify the applicant of their decision on the question whether he is homeless or threatened with homelessness.
- (2) If they notify him that their decision is that he is homeless or threatened with homelessness, they shall at the same time notify him of their decision on the question whether he has a priority need.
- (3) If they notify him that their decision is that he has a priority need, they shall at the same time notify him —
  - (a) of their decision whether he became homeless or threatened with homelessness intentionally, and
  - (b) whether they have notified or propose to notify another local housing authority under section 67 (referral of application on grounds of local connection).
- (4) If the local housing authority notify the applicant —
  - (a) that they are not satisfied that he is homeless or threatened with homelessness, or
  - (b) that they are not satisfied that he has a priority need, or
  - (c) that they are satisfied that he became homeless or threatened with homelessness intentionally, or
  - (d) that they have notified or propose to notify another local housing authority under section 67 (referral of application on grounds of local connection),
 They shall at the same time notify him of their reasons.
- (5) The notice required to be given to a person under this section shall be given in writing and shall, if not received by him, be treated as having been given to him only if it is made available at the authority's office for a reasonable period for collection by him or on his behalf.

#### Section 65. Duties to persons found to be homeless.

- (1) This section has effect as regards the duties owed by the local housing authority to an applicant where they are satisfied that he is homeless.
- (2) Where they are satisfied that he has a priority need and are not satisfied that he became homeless intentionally, they shall, unless they notify another local housing authority in accordance with section 67 (referral of application on grounds of local connection), secure that accommodation becomes available for his occupation.

- (3) Where they are satisfied that he has a priority need but are also satisfied that he became homeless intentionally, they shall -
  - (a) secure that accommodation is made available for his occupation for such period as they consider will give him a reasonable opportunity of securing accommodation for his occupation, and
  - (b) furnish him with advice and such assistance as they consider appropriate in the circumstances in any attempts he may make to secure that accommodation becomes available for his occupation.

#### Section 66. Duties to persons found to be threatened with homelessness

- (1) This section has effect as regards the duties owed by the local housing authority to an applicant where they are satisfied that he is threatened with homelessness.
- (2) Where they are satisfied that he has a priority need and are not satisfied that he become threatened with homelessness intentionally, they shall take reasonable steps to secure that accommodation does not cease to be available for his occupation.

#### Section 67.

- (1) If the local housing authority —
  - (a) are satisfied that an applicant is homeless and has a priority need, and are not satisfied that he became homeless intentionally, but
  - (b) are of opinion that the conditions are satisfied for referral of his application to another local housing authority in England, Wales and Scotland,  
They may notify that other authority of the fact that his application has been made and that they are of that opinion.
- (2) The conditions for referral of an application to another local authority are —
  - (a) that neither the applicant nor any person who might reasonably be expected to reside with him has a local connection with the district of the authority to whom the application was made,
  - (b) that the applicant or a person who might reasonably be expected to reside with him has a local connection with the district of that other authority, and
  - (c) that neither the applicant nor any person who might reasonably be expected to reside with him will run the risk of domestic violence in that other district.
- (3) For this purpose a person runs the risk of domestic violence —
  - (a) if he runs the risk of violence from a person with whom, but for the risk of violence, he might reasonably be expected to reside, or from a person with whom he formerly resided, or
  - (b) if he runs the risk of threats of violence from such a person which are likely to be carried out.
- (4) The question whether the conditions for referral of an application are satisfied shall be determined by agreement between the notifying authority and the notified authority or, in default of agreement, in accordance with such arrangements as the Secretary of State may direct by order made by statutory instrument.
- (5) An order may direct that the arrangements shall be —
  - (a) those agreed by any relevant authorities or associations of relevant authorities, or
  - (b) in default of such agreement, such arrangements as appear to the Secretary of State to be suitable, after consultation with such associations representing relevant authorities, and such other persons, as he thinks appropriate.
- (6) No order shall be made unless a draft of the order has been approved by resolution of each House of Parliament.

#### Section 68.

- (1) Where, in accordance with section 67(1), a local housing authority notifies another authority of an application, the notifying authority shall secure that accommodation is available for occupation by the applicant until it is determined whether the conditions for referral of his application to the other authority are satisfied.
- (2) If it is determined that the conditions for referral are satisfied, the notified authority shall secure that accommodation becomes available for occupation by the applicant; if it is determined that the conditions



are not satisfied, the notifying authority shall secure that accommodation becomes available for occupation by him.

- (3) When the matter has been determined, the notifying authority shall notify the applicant —
- (a) whether they or the notified authority are the authority whose duty it is to secure that accommodation becomes available for his occupation, and
  - (b) of the reasons why the authority subject to that duty are subject to it.
- (4) The notice required to be given to a person under subsection (3) shall be given in writing and shall, if not received by him, be treated as having been given to him only if it is made available at the authority's office for a reasonable period for collection by him or on his behalf.

#### Section 69.

- (1) A local housing authority may perform any duty under section 65 or 68 (duties to persons found to be homeless) to secure that accommodation becomes available for the occupation of a person —
- (a) by making available suitable accommodation held by them under Part II (provision of housing) or any enactment, or
  - (b) by securing that he obtains suitable accommodation from some other person, or
  - (c) by giving him such advice and assistance as will secure that he obtains suitable accommodation from some other person,
- And in determining whether accommodation is suitable they shall have regard to Part IX (slum clearance), X (overcrowding) and XI (houses in multiple occupation) of this Act.



## National Housing Rights Legislation



### United Kingdom Housing Act (1988)

#### Section 5.

- (1) An assured tenancy cannot be brought to an end by the landlord except by obtaining an order of the court in accordance with the following provisions of this Chapter or Chapter II below or, in the case of a fixed term tenancy which contains power for the landlord to determine the tenancy in certain circumstances, by the exercise of that power and accordingly, the service by the landlord of a notice to quit shall be of no effect in relation to a periodic assured tenancy.
- (2) If an assured tenancy which is a fixed term tenancy comes to an end otherwise than virtue of -
  - (a) an order of the court, or
  - (b) a surrender or other action on the part of the tenant, then ... the tenant shall be entitled to remain in possession of the dwelling-house let under that tenancy and ... his right to possession shall depend upon a periodic tenancy arising by virtue of this section.

#### Section 27.

- (1) This section applies if, at any time after 9th June 1988, a landlord (in this section referred to as “the landlord in default”) or any person acting on behalf of the landlord in default unlawfully deprives the residential occupier of any premises of his occupation of the whole or part of the premises.
- (2) This section also applies if, at any time after 9th June 1988, a landlord (in this section referred to as “the landlord in default”) or any person acting on behalf of the landlord in default —
  - (a) attempts unlawfully to deprive the residential occupier of any premises of his occupation of the whole or part of the premises, or
  - (b) knowing or having reasonable cause to believe that the conduct is likely to cause the residential occupier of any premises —
    - (i) to give up his occupation of the premises or any part thereof, or
    - (ii) to refrain from exercising any right or pursuing any remedy in respect of the premises or any part thereof, does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, and, as a result, the residential occupier gives up his occupation of the premises as a residence.
- (3) Subject to the following provisions of this section, where this section applies, the landlord in default shall, by virtue of this section, be liable to pay to the former residential occupier, in respect of his loss of the right to occupy the premises in question as his residence, damages assessed on the basis set out in section 28 below.
- (4) Any liability arising by virtue of subsection (3) above —
  - (a) shall be in the nature of a liability in tort; and
  - (b) subject to subsection (5) below, shall be in addition to any liability arising apart from this section (whether in tort, contract or otherwise).
- (5) Nothing in this section affects the right of a residential occupier to enforce any liability which arises apart from this section in respect of his loss of the right to occupy premises as his residence; but damages shall not be awarded both in respect of such a liability and in respect of a liability arising by virtue of this section on account of the same loss.



## National Housing Rights Legislation



### United Kingdom

#### Housing Act of 2004 - Accommodation needs of gypsies and travelers (2004)

##### Sec. 225. Duties of local housing authorities: accommodation needs of gypsies and travellers

- (1) Every local housing authority must, when undertaking a review of housing needs in their district under section 8 of the Housing Act 1985 (c. 68), carry out an assessment of the accommodation needs of gypsies and travellers residing in or resorting to their district.
- (2) Subsection (3) applies where a local housing authority are required under section 87 of the Local Government Act 2003 (c. 26) to prepare a strategy in respect of the meeting of such accommodation needs.



## National Housing Rights Legislation



### United Kingdom Matrimonial Homes Act (1983)

#### Section 1.

- (1) Where one spouse is entitled to occupy a dwelling house by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him or her the right to remain in occupation, and the other spouse is not so entitled, then, subject to the provisions of this Act, the spouse not so entitled shall have the following rights (in this Act referred to as “rights of occupation”) -
  - (a) if in occupation, a right not to be evicted or excluded from the dwelling house or any part thereof by the other spouse except with the leave of the court given by an order under this section;
  - (b) if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling house.
- (2) So long as one spouse has rights of occupation, either of the spouses may apply to the Court for an order -
  - (a) declaring, enforcing, restricting or terminating those rights, or
  - (b) prohibiting, suspending or restricting the exercise by either spouse of the right to occupy the dwelling house, or
  - (c) requiring either spouse to permit the exercise by the other of that right.



## National Housing Rights Legislation



### United Kingdom

#### Protection From Eviction Act (1977, as amended by section 29 of the Housing Act 1988)

##### Section 1.

- (1) In this section “residential occupier”, in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.
- (2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believe, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.
- (3) If any person with intent to cause the residential occupier of any premises —
  - (a) to give up the occupation of the premises or any part thereof, or
  - (b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;
  - (c) does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence he shall be guilty of an offence.
- (3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—
  - (a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or
  - (b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence, and (in either case) he knows, or has reasonable cause to believe, that the conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole part of the premises.
- (3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.
- (3C) In subsection (3A) above, “landlord”, in relation to a residential occupier of any premises, means the person who, but for —
  - (a) the residential occupier’s right to remain in occupation of the premises, or
  - (b) a restriction on the person’s right to recover possession of the premises, would be entitled to occupation of the premises and any superior landlord under whom that person derives title.
- (4) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding six months or to both;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.



## National Housing Rights Legislation



### United Kingdom Race Relations Act (1976)

#### Section 21.

- (1) It is unlawful for a person, in relation to premises in Great Britain of which he has power to dispose, to discriminate against another:
  - (a) In the terms on which he offers him those premises; or
  - (b) By refusing his application for those premises; or
  - (c) In his treatment of him in relation to any list of persons in need of premises of that description.
- (2) It is unlawful for a person, in relation to premises managed by him, to discriminate against a person occupying the premises:
  - (a) In a way he affords him access to any benefits or facilities, or by refusing or deliberately admitting to afford him access to them; or
  - (b) By evicting him, or subjecting him to any other detriment.



## National Housing Rights Legislation



### United Kingdom Social Security Act (1986)

#### Section 20.

(7) A person is entitled to housing benefit if-

- (a) he is liable to make payments in respect of a dwelling in Great Britain which he occupies as his home and also if, in respect of a particular day falling after 31st March 1989, but before 1st April 1990, the condition specified in subsection (7A) below is satisfied;
- (b) there is an appropriate maximum housing benefit in his case; and
- (c) either -
  - (i) he has no income or his income does not exceed the applicable amount; or
  - (ii) his income exceeds that amount, but only by so much that there is an amount remaining if the deduction for which section 21(5) below provides is made ...

#### Section 21.

- (5) Where a person is entitled to housing benefit ..., the amount shall be what remains after the deduction from the appropriate maximum housing benefit of prescribed percentages of the excess of his income over the applicable amount.



## National Housing Rights Legislation



### **United Kingdom: Scotland** The Homelessness Act of 2003

[This law may well be one of the more progressive anti-homelessness laws in Europe. If effectively implemented, this legislation has the potential to guarantee protection of the right to adequate housing for all homeless persons in Scotland by 2012.]



No information on relevant legislative clauses is available from this country.

Should you have such information we would appreciate if you could forward this to [Housing.Policy@unhabitat.org](mailto:Housing.Policy@unhabitat.org)



## National Housing Rights Legislation



### **Andorra** Constitution (1993)

#### Article 15

Inviolability of the dwelling shall be guaranteed. No one shall enter a dwelling or any other premises against the will of the owner or without a warrant, except in case of flagrant delicto. The privacy of communication shall also be guaranteed, except upon a reasoned court order.

#### Article 5

The Universal Declaration of Human Rights is binding in Andorra.



## National Housing Rights Legislation



### **Bosnia and Herzegovina** Constitution (1995)

#### Article 2 (1) Human Rights

Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. To that end, there shall be a Human Rights Commission for Bosnia and Herzegovina as provided for in Annex 6 to the General Framework Agreement.

#### Article 2 (2) International Standards

The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.

#### Article 2 (5) Refugees and Displaced Persons

All refugees and displaced persons have the right to freely return to their homes of origin. They have the right, in accordance with Annex 7 to the General Framework Agreement, to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void.



## National Housing Rights Legislation



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## National Housing Rights Legislation



### Bosnia and Herzegovina

#### Law on the Cessation of the Application of the Law on Abandoned Apartments (1998) (Bosnia and Herzegovina) (relevant provisions) <sup>(56)</sup>

#### I. GENERAL PROVISIONS

##### Article 1

The Law on Abandoned Apartments (“Official Gazette of RBH” no. 6/92, 8/92, 16/92, 13/94, 36/94, 9/95 and 33/95), Decree on Use of Abandoned Apartments (Official Gazette HZHB 13/93) and the regulations passed there under, as well as other regulations regulating the issue of abandoned apartments passed between 30 April 1991 and the entry into force of this Law which are being applied on the territory of the Federation of Bosnia and Herzegovina (hereinafter: the Federation) shall cease to be applied on the day of the entry into force of this law.

Following the entry into force of this Law, the authorities of the Federation and other bodies in the Federation shall refrain from undertaking any new actions by which apartments will be declared abandoned.

The competent bodies referred to in Paragraph 2 of this Article shall decide about the rights of occupancy right holders to return to their apartments which have been declared temporarily or permanently abandoned and the rights of temporary occupants of the abandoned apartment, and about further use of the apartment, in accordance with the provisions of this Law and the Law on Taking over the Law on Housing Relations (hereinafter: the ZOSO).

##### Article 2

All administrative, judicial and any other decisions enacted on the basis of the regulations referred to in Paragraph 1 of Article 1 of this Law terminating occupancy rights shall be null and void.

All administrative, judicial and any other decisions enacted on the basis of the regulations referred to in Paragraph 1 of Article 1 of this Law in which rights of temporary occupancy have been created shall remain effective until cancelled in accordance with this Law. Persons who moved into apartments on the basis of acts which have expired shall be considered to be temporary users. Article 3, Paragraph 3 of this Law shall not apply to such persons.

All administrative, judicial and any other decisions including the acts of allocation right holders enacted on the basis of the regulations referred to in Paragraph 1 of Article 1 of this Law in which new occupancy rights are created, as well as the contracts concluded pursuant to those acts, shall remain in force unless cancelled in accordance with this Law.

##### Article 3

The occupancy right holder of an apartment declared abandoned or a member of his/her household as defined in Article 6 of the ZOSO (hereinafter the “occupancy right holder”) shall have the right to return in accordance with Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina.

Paragraph 1 of this Article shall be applied only to those occupancy right holders who have the right to return to their homes of origin under Annex 7, Article 1 of the General Framework Agreement for Peace in Bosnia and Herzegovina. Persons who have left their apartments since 30 April 1991 are presumed to be refugees and displaced persons under Annex 7 absent a showing that they left their apartments for reasons wholly unrelated to the conflict.

Holder of occupancy right in the apartment which is inhabited by a person using the apartment without legal basis or which is vacant as of the date this Law enters into force shall be able, without any restrictions, to repossess the apartment in which he has an occupancy right. Persons using the apartment without legal basis shall be evicted and the authorities competent for allocation of emergency accommodation shall not be obliged to provide emergency accommodation to such persons.

A temporary user of an apartment who is required to vacate the apartment pursuant to the provisions of this Law and whose housing needs are otherwise met shall be obliged to move out from the apartment that he/she has been using within 90 days of the date of the issuance of the Decision by which it has been decided about the right of an occupancy right holder to the relevant apartment (hereinafter: the Decision under Article 6).

A temporary user of an apartment who is required to vacate the apartment pursuant to the provisions of this Law and whose housing needs are not otherwise met, shall be provided with accommodation in accordance with the ZOSO by the administrative body on the territory of which she/he had his/her latest domicile or residence. The temporary user shall be obliged to move out of the apartment within the deadline set in Article 7 of this Law.

Within thirty days of a Decision under Article 6 of this Law which concerns an apartment inhabited by a new

occupancy right holder on the basis of a decision of the allocation right holder, or of a contract (hereinafter: the current occupant), the allocation right holder shall refer the case to the responsible cantonal administrative authority which shall pass a decision on allocation of another apartment to the current occupant or the occupancy right holder, within 30 days from the date the case has been submitted.

If the responsible cantonal authority decides that the occupancy right holder should be allocated another apartment, the decision shall be made in accordance with the criteria which must comply with Article 1. of Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina, in accordance with the European Convention of Human Rights and its Protocols, as well as the Law on Housing Relations. These criteria shall be developed by the Federation Ministry of Urban Planning and Environment, in consultation with organizations competent for the implementation of the standards mentioned in this Paragraph.

In all cases in which the current occupant remains in the apartment, all moveable property of the occupancy right holder found in the apartment must be returned to him/her upon his/her request.

In no event shall the failure of the cantonal authorities or of an allocation right holder to meet their obligations under this Article, or the failure of the current occupancy right holder to accept an apartment, operate to delay the ability of an occupancy right holder to reclaim the apartment.

## II. THE PROCEDURE FOR REPOSSESSION OF AN APARTMENT AND THE RIGHTS OF THE OCCUPANCY RIGHT HOLDER

### Article 4

The occupancy right holder as defined in Article 3, Paragraph 1 of this Law shall be entitled to claim the repossession of an apartment.

A claim for repossession of an apartment shall be presented to the municipal administrative authority competent for housing affairs, unless otherwise determined by cantonal law.

The claim shall be submitted in writing signed by the occupancy right holder or orally, in person by the occupancy right holder or an authorized representative.

A claim should include:

1. information on the apartment;
2. any evidence that the claimant is the holder of an occupancy right or a member of the latter's household;
3. the date when the occupancy right holder intends to reoccupy the apartment, but not later than one year from the date of submitting the claim; and
4. information on the place of residence of the occupancy right holder and the members of the occupancy right holder's household at the time the claim is filed.

### Article 5

A claim for repossession of the apartment must be filed within six months from the date of the entry into force of this Law.

If the occupancy right holder does not file a claim within the time limit referred to in the previous paragraph, the occupancy right is cancelled.

### Article 6

Upon the receipt of a claim for return of the apartment to the occupancy right holder, the competent authority shall decide on the claim by a decision within 30 days from the date of receipt of the claim.

### Article 7

The decision referred to in the preceding Article by which the claim of the occupancy right holder is accepted, shall contain:

1. a decision confirming that the claimant is the holder of the occupancy right;
2. a decision on repossession of the apartment by the occupancy right holder if there is a temporary user in the apartment, or if the apartment is vacant or occupied without legal basis;
3. a decision on termination of the right of temporary use of the apartment, if there is a temporary user in the apartment;
4. a time limit for vacating the apartment by a temporary user or another person occupying the apartment;

5. a decision concerning whether the temporary user is entitled to accommodation in accordance with the ZOSO.

The deadline for vacating the apartment, referred to in Paragraph 1(4) of this Article may not be shorter than 90 days from the date of the issuance of the decision, nor longer than the day of intended return of the holder of occupancy right, and the day of intended return may not be earlier than 90 days from the date of submitting the claim.

In exceptional circumstances, the deadline referred to in Paragraph 2 of this Article may be extended to up to one year if the municipality or the allocation right holder responsible for providing alternative accommodation in accordance with Article 3 of this Law provides detailed documentation regarding its efforts to secure alternative accommodation to the cantonal administrative authority responsible for housing affairs, and the cantonal authority finds that there is a documented absence of available housing. In each individual case, the requirements of the European Convention on Human Rights and its Protocols must be met, and the occupancy right holder must be notified of the decision to extend the deadline and the basis for the decision 30 days before the deadline has expired.

#### Article 8

The competent administrative body shall deliver the decision within 5 days from the date of issuance of the decision to:

1. the occupancy right holder;
2. the occupant of the apartment ;
3. the allocation right holder.

Any appeal against a decision must be submitted to the cantonal ministry responsible for housing affairs within 15 days from the date of receipt of the decision.

An appeal shall not suspend the execution of the decision.

#### Article 9

The handing over of the apartment to the occupancy right holder shall be witnessed by an official of the competent authority. .

The handing over of the apartment and its contents shall be recorded in the minutes including, among other things, a detailed description of the current state of the apartment and its contents.

#### Article 10

Proceedings in the cases initiated by the claims referred to in Article 4 of this Law shall be considered urgent.

#### Article 11

If the person occupying the apartment fails to voluntarily comply with a decision ordering him/her to vacate the apartment, the competent administrative body shall employ compulsory enforcement in accordance with law.

The enforcement shall be carried out at the request of the occupancy right holder.

#### Article 12

The occupancy right shall terminate by the force of the law if the occupancy right holder fails, without good cause, to reoccupy the apartment within one year from the date when his right to return to the apartment has been established by a final decision.

The occupancy right holder is considered to have good cause not to reoccupy the apartment:

1. if s/he has requested the commencement of enforcement proceedings, but the apartment continues to be occupied by another party;
2. if s/he has been unable to return to the municipality in which the apartment is located due to a well-founded fear of persecution;
3. if the occupancy right holder was called up for military service;
4. if the occupancy right holder has been receiving medical treatment;
5. if the occupancy right holder is staying in a retirement house;
6. if the occupancy right holder has been convicted and is serving a prison sentence for this period;
7. if security measures are being applied to the occupancy right holder;
8. if the occupancy right holder and the members of his/her household are temporarily staying in an other place

- in the country or abroad on the bases stated in paragraph 1 of Article 48 of the ZOSO; or
9. if the apartment is the subject of an unresolved claim submitted to the Commission for Real Property Claims of Displaced Persons and Refugees.

In the cases referred to in Paragraph 1 of this Article, as long as these reasons last, the right of the occupancy right holder to use the apartment shall not terminate.

#### Article 13

Upon the cancellation of an occupancy right under Articles 5 or 12 of this Law, the allocation right holder may allocate the apartment for use to the temporary occupant or to another party in accordance with the provisions of the ZOSO.

Where the apartment is allocated to another party under the paragraph 1 of this Article, the temporary occupant of the apartment must vacate the apartment within 60 days of being notified of the final decision on allocation of the apartment to another occupant.

### III. CLAIMS TO THE COMMISSION FOR REAL PROPERTY CLAIMS OF DISPLACED PERSONS AND REFUGEES

#### Article 14

A party affected by a decision made under Article 7 may at any time file a claim with the Commission for Real Property Claims of Displaced Persons and Refugees (GFAP, Annex 7, hereinafter the Property Commission). In the event that such a claim is filed, all proceedings, including execution of decisions or orders, shall be stayed pending the final decision of the Property Commission.

A decision of the Property Commission is final and binding.

Following a decision of the Property Commission, the rights and obligations of the party referred to in Paragraph 1 of this Article shall be the same as if the decision of the Property Commission was a decision of the competent authorities made in accordance with this law.

### IV. PURCHASE OF APARTMENTS WHICH HAVE BEEN DECLARED ABANDONED

#### Article 15

The occupancy right holder, whose contract on the use of the apartment was cancelled in the period between 30 April 1991 and the entry into force of this Law, on the basis of regulations referred to in Article 1 of this Law and Article 47 of the ZOSO, and whose apartment has been returned to him in line with this Law has the right to purchase the apartment in the sense of the Law on Sale of Apartments with Occupancy Right.

The occupancy right holder shall acquire the right to purchase after he has been using the apartment for a period of at least six months.

The occupancy right holder may not sell the apartment within 5 years from the day of the registration of his ownership right, and this shall be noted in the land books or other respective registers on rights in real property.

The prohibition of purchase of the apartment by the current holder of occupancy right shall last until the deadline for the former occupancy right holder to submit the claim for repossession of the apartment has expired, i.e. until the proceedings under this Law have been finalized.

### V. FINAL PROVISIONS

#### Article 16

Contracts on the use of apartments declared abandoned in accordance with the regulations referred to in Article 1 (1) of this Law, as well as other decisions on allocation of apartment for use issued after 7 February 1998 are null and void.

Provision referred to in Paragraph 1 of this Article shall also apply to contracts on the use of apartment if they were concluded before 7 February 1998 but their beneficiary did not move into the apartment.

Any person who uses an apartment on the basis of a decision or contract referred to in Paragraph 1 of this Article shall be considered to occupy the apartment without legal basis.

#### Article 17

The Federation Minister of Urban Planning and Environment shall pass an instruction on the application of Article 4 of this Law within 30 days from the date of the entry into force of this Law.



#### Article 18

The procedure for the return of apartments to the possession of the occupancy right holders determined by this law shall be carried out in accordance with the Law on General Administrative Procedure (“Official Gazette of FBiH” No. 2/98), unless otherwise stipulated by this law.

#### Article 19

This law shall enter into force on the day following its publication in the “Official Journal of the Federation of Bosnia and Herzegovina”.



## National Housing Rights Legislation



### Bosnia and Herzegovina

Law on the Cessation of the Application of the Law on Abandoned Apartments (2 December 1998) (Republika Srpska) <sup>(58)</sup>

#### I. GENERAL PROVISIONS

##### Article 1

The Law on Use of Abandoned Property (Official Gazette of RS, Nos. 3/96 and 21/96) shall cease to be in force, as well as the regulations passed there under and other regulations regulating the issues of abandoned property and apartments passed between 30 April 1991 and the entry into force of this Law.

##### Article 2

All administrative, judicial, and any other decisions enacted on the basis of the regulations referred to in Article 1 of this Law in which rights of temporary occupancy have been created shall remain effective until cancelled in accordance with this Law.

All administrative, judicial, and any other decisions enacted on the basis of the regulations referred to in Article 1 of this Law in which new occupancy rights have been created shall be treated as acts granting rights of temporary occupancy until cancelled in accordance with this Law.

All administrative, judicial and any other acts and any other disposals of real estate and apartments, enacted on the basis of the regulations referred to in Article 1 of this Law shall cease to be effective after a claim has been filed by the authorised claimant.

#### II. RETURN OF PROPERTY TO PRIVATE OWNERS, POSSESSORS OR USERS

##### Article 3

The owner, possessor or user of the real property who abandoned the property shall have the right to repossess the real property with all the rights which s/he had before 30 April 1991 or before the real property became abandoned.

##### Article 4

For the purpose of this Law, the owner, possessor or user shall be understood to mean the person who was the owner, possessor or user of the real property under the applicable legislation at the time when the real property became abandoned.

##### Article 5

A user to whom the real property was allocated for temporary use pursuant to the Law on the Use of Abandoned Property (hereinafter referred as: the temporary user) may continue to use the real property under the conditions and in the manner as provided by the Law on the Use of Abandoned Property until a decision referred to in Article 11 of this Law has been issued.

##### Article 6

If the temporary user who is required to vacate the property pursuant to the provisions of this Law cannot or does not wish to return to the apartment in which s/he lived before 30 April 1991 and who has not been provided with another apartment meeting the conditions of appropriate accommodation, the responsible body of the Ministry of Refugees and Displaced Persons on the territory of which s/he had his/her last domicile or residence shall provide him/her with appropriate accommodation within the deadline set in the decision ordering him/her to move out.

If the temporary user referred to in Paragraph 1 of this Article presents evidence that s/he submitted a claim for repossession of his/her property, s/he may not be evicted by force until s/he is enabled to return or freely dispose of his/her property, in line with Annex 7 of the General Framework Peace Agreement for Bosnia and Herzegovina or until an alternative accommodation has been provided in another way within one year.

If the request of the temporary user and free disposal of his/her property has been resolved, in no event shall failure of the responsible body to meet its obligations under paragraph 1 of this Article operate to delay the ability of the owner, possessor or user to enter into possession of his/her property.

The body responsible for the provision of accommodation shall not be obliged to provide an accommodation to a

person using the apartment without valid legal basis.

#### Article 7

The owner, possessor or user of abandoned real property, or his/her authorised representative, shall have the right to file a claim at any time for the repossession or disposal in another way of his/her abandoned property.

The right of the owner to file a claim shall not become obsolete.

#### Article 8

A claim under Article 7 of this Law may be filed by the owner, possessor or user of abandoned real property with the responsible body of the Minister of Refugees and Displaced Persons in the municipality on the territory of which the real property is located.

Claims may be made in writing signed by the claimant or an authorised representative, or orally by the claimant or an authorised representative. Claims made in writing may be submitted in person, by mail or by any other person. No power of attorney is required for another person to submit a claim signed by the claimant.

A claim should include:

1. information on the owner, possessor or user;
2. all necessary information on the real property;
3. any evidence possessed by the claimant indicating that the claimant is the owner, possessor or user of the real property;
4. the date when the claimant intends to repossess the real property.

The responsible body shall accept claims regardless of whether or not supporting documentation is supplied by the claimant. In the event that the claimant cannot provide the necessary supporting documentation, the responsible body shall check the records of the relevant court or administrative body and any other available documentation to confirm the rights of the claimant.

The responsible body shall accept any identification document issued by the state of Bosnia and Herzegovina or any administrative body in either Entity, and any other document which shows the claimant's identity, and shall use any options provided in the Law on General Administrative Proceedings in the identification process.

The claimant shall be fully released from taxation, as well as from other expenses of the proceedings as provided in Articles 113 through 119 of the Law on General Administrative Proceedings ("The SFRY Official Gazette", No. 47/86, "The RS Official Gazette", No. 1/94, Special Issue 10/95).

#### Article 9

The responsible body of the Ministry of Refugees and Displaced Persons shall be obliged to issue a decision to the claimant within 30 days from the date of receipt of the claim for repossession of real property.

#### Article 10

The proceedings to return the real property to the owner, possessor or user shall be carried out in accordance with the provisions of the Law on General Administrative Proceedings, unless this Law provides otherwise. The procedure until the issuance of the decision shall be carried out as an expedited procedure.

#### Article 11

The decision on return of the real property to the owner, possessor or user shall contain the following:

- information on the owner, possessor or user to whom the real property is returned,
- information on the real property subject to return,
- the time limit within which the real property will be returned or put at disposal of the owner, possessor or user,
- a decision whether the temporary user is entitled to appropriate accommodation,
- a decision terminating the right of the temporary user to use the real property as of the date of the intended return of the claimant,
- the time limit for the temporary user to vacate the property, or for handing over of the land.

The decision under Paragraph 1 of this Article may not set a time limit for the temporary user to vacate the property shorter than 90 days from the date of the issuance of the decision, nor longer than the date of the intended return of the owner, possessor or user, but the day of the intended return may not be earlier than 90 days from the date of

submitting the claim.

The claimant may reoccupy property that is not in possession of a temporary user immediately on receipt of the decision.

In exceptional circumstances, the deadline referred to above may be extended by up to one year if the body responsible for providing another accommodation in accordance with Article 6 of this Law provides detailed documentation regarding the lack of available accommodation to the Ministry of Refugees and Displaced Persons.

In case of the return of arable land into possession, the time limit for its handing over may be extended, as an exception, until the harvest is collected.

#### Article 12

The responsible body of the Ministry of Refugees and Displaced Persons shall submit its decision to the claimant requesting the repossession of the property and the temporary user of the property.

#### Article 13

The party to whom the decision under Article 11 of this Law is referred may at any time initiate proceedings before the Commission for Real Property Claims of Displaced Persons and Refugees (Annex 7 to the General Framework Agreement of Peace in Bosnia and Herzegovina, hereinafter referred to as the Commission).

In case that the proceedings under Paragraph 1 of this Article have been initiated, all other proceedings carried out before the competent bodies, including the procedure to enforce the decision referred to in Article 11 of this Law, shall be stayed pending the final decision of the Commission.

A decision of the Commission shall be final and binding.

In the light of specifying the rights and obligations of the party referred to in Paragraph 1 of this Article, the decision of the Commission shall have the same legal force as the decision of any other responsible body issued in accordance with this Law.

A decision of the Commission shall be enforced by the competent bodies of the Republika Srpska.

### III. RETURN OF APARTMENTS TO THE HOLDERS OF OCCUPANCY RIGHT

#### Article 14

The occupancy right holder of an abandoned apartment shall have the right to return to the apartment in accordance with Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina.

Persons who have left their apartments after 30 April 1991, are presumed to be refugees and displaced persons under Annex 7, unless it is established that they left their apartments for reasons wholly unrelated to the conflict.

#### Article 15

The occupancy right holder referred to in Article 14 of this Law shall be entitled to file a claim for repossession of the apartment.

A claim for repossession of the apartment shall be filed with the responsible body of the Ministry of Refugees and Displaced Persons in the municipality in which the apartment is located.

A claim for repossession of the apartment should include:

- information on the claimant;
- information on the apartment;
- evidence that the claimant is the occupancy right holder or a member of the latter's family household;
- the date when the claimant intends to reoccupy the apartment, but not later than one year from the date of submitting the claim;
- information on the residence of the occupancy right holder and members of his/her household at the time when the claim is submitted.

If the temporary user of the apartment presents evidence that s/he submitted a claim for return of his/her occupancy right, s/he shall not be evicted by force from the apartment allocated to him/her for temporary use until s/he is enabled to freely dispose of his/her apartment, or until an appropriate accommodation has been provided in another way within one year.

The responsible body shall accept all claims with or without the appropriate documents enclosed by the claimant. In cases when the claimant is not able to provide the necessary relevant documents, the responsible body shall verify

the evidence, as well as other available documents, with the allocation right holder, the appropriate court or administrative body in order to have the rights of the claimant confirmed.

The responsible body shall accept any identification document issued by the state of Bosnia and Herzegovina or any legal body in either Entity, as well as any other document confirming the identity of the claimant.

The claimant shall be fully exempted from taxation as well as from other expenses of the proceedings, as provided in Articles 113 through 119 of the Law on General Administrative Proceedings.

#### Article 16

A claim for repossession of the apartment may be filed within 6 months from the date of entry into force of this Law.

If the occupancy right holder does not file a claim within the time limit referred to in the previous paragraph, his/her occupancy right shall be cancelled.

#### Article 17

The responsible body of the Ministry of Refugees and Displaced Persons shall decide on the claim for the repossession of the apartment by the occupancy right holder within 30 days from the date of receipt of the claim.

The allocation right holder shall refer the case to the responsible municipal or city administrative body within 30 days from the issuance of the decision referred to in the Article above which relates to the apartment occupied by the new occupancy right holder based on an act issued by the allocation right holder, i.e. contract (hereinafter: the current user). The responsible municipal or city administrative body shall then pass a decision on the allocation of another apartment to the current user or occupancy right holder within a deadline which cannot be longer than the deadlines referred to in Article 18 of this Law.

If the responsible municipal body has decided to allocate another apartment to the occupancy right holder, this Decision shall have to be passed in accordance with the criteria which must be harmonised with Article 1 Annex 7 of the General Framework Agreement in line with the European Convention on Human Rights and with other regulations of the Republika Srpska.

#### Article 18

The decision on repossession of the apartment by the occupancy right holder shall contain:

- a decision confirming that the claimant is the occupancy right holder;
- a decision on repossession of the apartment by the occupancy right holder if there is a temporary user in the apartment, or if the apartment is vacant or occupied without legal basis;
- a decision on termination of the right of temporary use of the apartment if there is a temporary user of the apartment;
- a time limit for vacating the apartment by a temporary user or another person in possession of the apartment;
- a decision concerning whether the temporary user is entitled to accommodation in accordance with the ZOSO.

The time limit for vacating the apartment referred to in Paragraph 1(4) of this Article may not be shorter than 90 days from the date of the issuance of the decision, nor longer than the day of the intended return of the holder of the occupancy right, but the day of the intended return may not be earlier than 90 days from the date of submitting the claim.

The occupancy right holder may reoccupy an apartment that is vacant immediately on receipt of the decision, unless the apartment is in possession of a temporary user in accordance with this Law.

In exceptional circumstances, the deadline referred to in Paragraph 2 of this Article may be extended by up to one year if the body responsible for providing alternative accommodation on the territory of which the temporary user of the apartment had the last domicile or residence provides detailed documentation regarding the lack of available housing for provision of appropriate accommodation the Ministry for Refugees and Displaced Persons.

In each individual case, the requirements of the European Convention on Human Rights and its Protocols must be met, and the occupancy right holder shall be notified of the decision to extend the deadline and the basis for the decision 30 days before the deadline has expired.

#### Article 19

The responsible body shall deliver the decision referred to in Article 18 of this Law within 8 days from the date of issuance of the decision to:

- the occupancy right holder;

- the user of the apartment;
- the allocation right holder.

#### Article 20

The proceedings to return the apartment to the occupancy right holder shall be carried out in accordance with the provisions of the Law on General Administrative Proceedings, unless this Law provides otherwise.

#### Article 21

The occupancy right to the apartment shall cease in case the occupancy right holder fails to reoccupy the apartment without a justified cause, within one year from the day when the decision becomes final.

The reason for which the occupancy right holder failed to commence to use the apartment shall be deemed justified:

- if the occupancy right holder has initiated an enforcement procedure, while the other party continues to occupy that apartment;
- if the occupancy right holder is unable to return to the municipality where the apartment is located for the reason of his/her justified fear of persecution;
- if the occupancy right holder has been drafted into the army;
- if the occupancy right holder is admitted to medical care;
- if the occupancy right holder is in the old peoples' home, disabled peoples' home, pensioners' home, etc.
- if the occupancy right holder is serving a prison sentence during the period of imprisonment sentence;
- if a certain security measure is being taken against the occupancy right holder;
- if the occupancy right holder and members of her/his family household temporarily reside in a different place within the country or abroad for the reasons mentioned in Paragraph 1 of Article 48 of the ZOSO; or
- if an apartment is the subject of the claim submitted to the Commission for the Real Property Claims of the Displaced Persons and Refugees.

The occupancy right holder's right to use the apartment shall not cease in the cases referred to in the previous paragraph.

#### Article 22

Upon the cancellation of the occupancy right under Articles 16 and 21 of this Law, the allocation right holder may allocate the apartment for use to the temporary user or another person in accordance with the provisions of the ZOSO.

If the temporary user has been issued a decision by the Ministry of Refugees and Displaced Persons, s/he shall stay in possession of such an apartment until he is provided with another appropriate accommodation.

#### Article 23

The party referred to in the decision under Article 18 of this Law may initiate at any time proceedings before the Commission for Real Property Claims of Displaced Persons and Refugees (Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina, hereafter: the Commission).

In case that such proceedings have been initiated, all other proceedings carried out before the competent bodies, including the procedure to enforce the decision, shall be stayed pending the final decision of the Commission.

A decision of the Commission shall be final and binding.

In the light of specifying the rights and obligations of the party referred to in Paragraph 1 of this Article, the decision of the Commission shall have the same legal force as the decision of any other responsible body issued in accordance with this Law.

A decision of the Commission shall be enforced by the competent body of Republika Srpska.

### IV - SPECIAL PROVISIONS

#### Article 24

The repossession of abandoned real property or the apartment by the owner, user or occupancy right holder shall be witnessed by an official and interested parties.

A report shall be made on the return of the real property or apartment and on the reinstatement of the owner or user into possession of the property or apartment. The report shall contain a detailed description of the real property under the process of return.

#### Article 25

The provisions of this Law shall also apply to the abandoned real property the ownership of which has been acquired after 30 April 1991 under any title on sale of real property (contracts on exchange, purchase, gift, etc.)

#### Article 26

The provisions of this Law regulating the manner of repossession of the real property or apartment by the owner, possessor or user shall also apply regarding repossession of the real property allocated to temporary users on the basis of rationalisation (excess housing space).

#### Article 27

A decision on repossession of real property may be appealed with the Ministry of Refugees and Displaced Persons within 15 days from the date of the receipt of the decision.

#### Article 28

The conditions for and the manner of the purchase of an apartment for the occupancy right holders to whom the apartments have been returned in accordance with this Law shall be regulated by a separate law.

#### Article 29

The Minister of Refugees and Displaced Persons shall pass an instruction on the application of Articles 8 through 11 and Articles 15 through 18 of this Law within 30 days from the date of the entry into force of this Law.

#### Article 30

This Law shall enter into force on the 8th day after its publication in the Official Gazette of the Republika Srpska.



## National Housing Rights Legislation



### Bosnia and Herzegovina

Law on the Sale of Apartments with Occupancy Rights (6 December 1997) (Bosnia and Herzegovina) <sup>(57)</sup>

#### I. GENERAL PROVISIONS

##### Article 1

This Law shall regulate conditions and method of sale of apartments with occupancy right together with the common parts and facilities of the building, as well as the method of determining the price of the apartment and cessation of occupancy right.

##### Article 2

Apartment and auxiliary premises shall be understood to mean premises or a set of premises as defined by provisions of the Law on Housing Relations ("Official Gazette of SR BiH" No: 14/84, 12/87 and 13/89 - hereinafter: the Law on Housing Relations).

##### Article 3

An apartment shall be purchased with the common parts and facilities of the building which serve to the building as a whole, together with the land under the building.

Common parts and facilities of the building are defined by provisions of the Law on Housing Relations.

Premises with occupancy right which are not considered as an apartment may also be subject to sale, if it is prescribed by regulations that they may be subject to transactions.

A garage shall also be subject to sale, if it makes a building unit with the apartment or if it was given to the occupant for use as an integral part of the apartment.

##### Article 4

For the purposes of this Law, the following shall not be considered as an apartment:

1. premises in buildings for accommodation of individual persons,
2. premises in buildings for temporary accommodation and
3. premises in administrative and business buildings.

##### Article 5

Provisions of this Law shall not be applied to sale of apartments:

1. which are located in buildings for which a procedure for demolition has been initiated,
2. which are intended for living while performing official duties,
3. which are located in business buildings used for the activities of state administration, Federal administration, judiciary, health care, transport and communications.

##### Article 6

Apartments owned by legal entities whose seats are in the territory of the Federation of Bosnia and Herzegovina (hereinafter: the Federation), and which are located in the territory of the states formed after the dissolution of the former SFRY, shall be sold in the manner regulated in the respective state and under conditions of reciprocity, unless otherwise regulated by an inter-state agreement.

A foreign citizen, under conditions stipulated by this Law, may purchase an apartment only if a citizen of Bosnia and Herzegovina is entitled to purchase an apartment in the respective state.

#### II. RIGHT TO BUY APARTMENT

##### Article 7

Any holder of occupancy right, except in the case referred to in Article 5 of this Law, may submit a written request for buying an apartment to the holder of the right to dispose with the apartment (hereinafter: the seller) and the seller



shall be obliged to sell it.

Request from paragraph 1 of this Article shall be submitted within two years from the day of the application of this Law, and contract on sale of the apartment (hereinafter: the contract) must be concluded within three months from the day the request for buying apartment has been submitted.

If the seller does not conclude the contract upon the request of the holder of occupancy right who wants to purchase the apartment within the deadline referred to in paragraph 2 of this Article, the buyer shall have the right to initiate judicial proceedings.

The court ruling shall replace the contract in its entirety. As an exception, the term for the conclusion of the contract concerning an apartment for which all facts relevant for the sale of the apartment were not established at the time the request for purchasing the apartment had to be submitted, shall be counted from the day of the establishment of these facts.

Facts relevant for the sale of an apartment shall be evaluated at the time of the conclusion of the contract.

#### Article 8

Occupancy right holder shall be considered to be the person to whom the apartment was allocated for use by the owner i.e. the allocation right holder of the apartment, and who had signed the contract on the use of the apartment or the person to whom the apartment was allocated by final and binding judicial decision, as well as the person to whom this right was recognised by the act of a competent body in accordance with the Law on Housing Relations.

#### Article 8a

The occupancy right holder over an apartment which was proclaimed as abandoned by special regulations applied at the territory of Federation Bosnia and Herzegovina during the period of 30 April 1991 to 4 April 1998, shall acquire the right to purchase the apartment in compliance with the provisions of this Law upon expiry of two year deadline after his/her reinstatement in the apartment.

In the decision-making procedure related to the claim for purchase of the apartment, the owner of the apartment shall be obliged to establish, on the basis of available documentation, whether the claimant is the occupancy right holder referred to in paragraph 1 of this Article.

A contract on sale of the apartment concluded in contravention of the provisions in paragraph 1 of this Article shall be null and void.

The occupancy right holder referred to in paragraph 1 of this Article may submit a claim for purchase of the apartment in accordance with Article 7, paragraph 1 of this Law, within a six months deadline of a day on which he acquired the right to purchase the apartment.

#### Article 9

Under conditions prescribed by this Law, the members of the close family household of the occupancy right holder may also buy an apartment, with the approval of or in case of death of the occupancy right holder.

Members of the close family household of the occupancy right holder shall be considered to be the persons referred to in the Law on Housing Relations.

#### Article 10

Under conditions prescribed by this Law the occupancy right holder, his/her spouse or a member of his/her close family household may purchase only one apartment.

Any contract concluded in violation of provision referred to in paragraph 1 of this Article shall be null and void.

#### Article 11

Spouses may buy an apartment together, and one of them may buy it only with the approval of the other one.

If co-tenants have the occupancy rights on one apartment, they shall buy the apartment together each the part on which he/she has the occupancy right, unless they agree otherwise.

As an exception from paragraph 2 of this Article, if one or more co-tenants do not submit the request for buying their parts of the apartment within the deadline referred to in Article 7 of this Law, other co-tenants shall have the right to buy the apartment.

Approval and agreement referred to in paragraphs 1 and 2 of this Article shall be given in the contract or in a separate document with certified signature.

In case the approval is not given, or the agreement is not reached, the decision shall be made in the judicial

proceedings.

#### Article 12

Apartments shall be sold by the seller from Article 7 (1) of this Law.

#### Article 13

Apartments whose seller is unknown shall be sold by the municipality.

#### Article 14

For the purposes of this Law, an apartment whose seller is unknown shall be understood to mean an apartment whose holder of the right of disposal is a legal entity which did not register its activities according to the current regulations, or which ceased to operate and its legal successor is unknown or not determined, or whose seat is unknown, and the occupancy right holder is not able to file the request for buying the apartment within the deadline prescribed by Article 7 (2) of this Law.

In case referred to in paragraph 1 of this Article the occupancy right holder shall submit the request to the competent service of the municipality in which the apartment is located.

After having completed the required procedure, the competent service of the municipality shall allow the occupancy right holder who fulfils the conditions prescribed by this Law to purchase the apartment, and shall conclude the contract within the deadline referred to in Article 7 of this Law.

#### Article 15

Apartments whose holders of the right of disposal were the former JNA and the SSNO (Federal Secretariat of National Defence) shall be sold by the Federation Ministry of Defence, in accordance with this Law.

An organisational unit of the Federation Ministry of Defence on the municipal level shall sell the apartments from paragraph 1 of this Article which are on the territory within its jurisdiction.

Apartments whose holders of the right of disposal were the bodies and organisations of former SFRY, with the exception of paragraphs 1 and 2 of this Article, shall be sold by the Cantonal Government on the territory of which the apartment is located.

Apartments which are owned by the bodies and organisations of Bosnia and Herzegovina shall be sold by the Government of the Federation of Bosnia and Herzegovina.

### III. PRICE OF AN APARTMENT

#### Article 16

The price of an apartment shall be defined by contract, depending on:

- the value of the apartment established in accordance with Article 18 of this Law;
- amount of funds of the occupancy right holder which he invested in the apartment;
- depreciation of the apartment;
- level of war damage which the occupancy right holder repaired, or which is to be repaired
- discounts recognised belonging to the purchaser.

#### Article 17

The price of the apartment shall be fixed on the basis of the value of the apartment as defined by Articles 18 to 21 of this Law and reductions as defined by Articles 21 to 24 of this Law, and shall be calculated in DM.

#### Article 18

The value of the apartment shall consist of the construction value of the apartment, corrected by apartment's location coefficient. The construction value of an apartment shall be 600 DM per m<sup>2</sup>.

Apartment's location coefficient shall be established by the competent Cantonal Government within the range from 0.80 to 1.20 depending on the area of the settlement where the apartment is located, infrastructure support to the settlement, floor and other relevant facts.

#### Article 19

Upon the request of the purchaser, the value of the apartment shall be reduced by the amount of personal funds

invested or which need to be invested in the apartment by the purchaser, as follows:

- non-refunded funds he/she invested as his/her own share for the purpose of acquiring occupancy rights;
- the funds not paid in the name of compensation for dispossessed property to the holder of occupancy rights for the purpose of acquiring occupancy rights;
- funds with which the holder of occupancy rights removed war damage.

The amount of invested funds shall be defined on the basis of documentation or the estimate of the expert witness of civil engineering profession.

The amount of invested or needed funds from paragraph 1, line 3 of this Article shall be recognised to the purchaser in the amount not exceeding 30 % of the construction value.

#### Article 20.

The value of an apartment defined on the basis of Articles 18 and 19 of this Law shall be reduced on the basis of depreciation at the rate of 1 % per year, and not more than up to 60 %.

The price of garage shall be defined in the manner from paragraph 1 of this Article, provided that the purchaser does not have the right to reductions, and that he shall be obliged to pay the price of garage in full even in case when the apartment is paid by instalments.

#### Article 21

The purchaser shall be given a personal reduction of price of the apartment determined in accordance with Article 20 of this Law, in the amount of 1 % per full year of service with domestic legal or physical persons, including years of service with legal and physical persons from the area of SFRY until 06 April 1992.

Reduction based on years of service of spouses defined in paragraph 1 of this Article shall be calculated cumulatively and up to 75 %.

The beneficiary of family pension who is a purchaser, shall also be recognised a reduction of price of the apartment based on the years of service of the deceased holder of occupancy right.

#### Article 22.

The purchaser of an apartment shall be recognised a reduction of price of the apartment determined in accordance with Article 21 of this Law, as follows:

- 0.25 % for every month spent in the RBiH Army, Croat Council of Defence or Police (hereinafter: the Armed Forces) and in National - Liberation War from 1941 until 1945;
- 0.12% for every month spent under a working duty and in the unit of Civil Protection during the state of war.

#### Article 23

Purchasers of apartments who are war victims shall be entitled to a special reduction of the value of the apartment determined in accordance with Articles 19 to 22 of this Law, as follows:

1. Discount of 100% when the apartment is purchased by:
  - a. minor child as well as by the child receiving full time education both parents of whose were killed in the home guard-defensive war or were killed as victims of the aggression,
  - b. person who is military or civil invalid of war with at least 90% of physical damage.
2. Discount of 75% when the apartment is purchased by:
  - a. person whose two or more members of the family household were killed as members of the Federation Armed Forces in the defensive liberation war or were killed as victims of that aggression.
  - b. the holder of occupancy right whose spouse was killed in the home guard- defensive liberation war as a member of the Armed Forces or was killed as a victim in that aggression if he/she lives in a family household with a pre-school (a child or an adopted child) receiving full time education or with a child (an adopted child) who is the holder of the family property. In that case the apartment shall be jointly owned by the spouse and the child (adopted child).
3. Discount of 50% when the apartment is purchased by:
  - a. holder of occupancy right whose spouse was killed in home guard-defensive liberation war or was killed as a victim in that aggression,

- b. military invalid or a civil invalid of war with 60 % to 90 % of physical damage,
  - c. a parent whose child with who the parent lived in a family household was killed in the home guard-defensive, liberation war or was killed as a victim in that aggression.
4. Discount of 25 % when the apartment is purchased by:
- a. military or civil invalids of war with 20 % to 60 % of physical damage.
  - b. camp inmates and political prisoners who were in camps or prisons respectively during the aggression on Bosnia and Herzegovina for at least 12 months, which shall be proved by a credible documentation.

Military and civil war invalids of certain categories from this Article shall be considered persons to who that property is recognised on the basis of a separate law.

War invalids and other invalids who do not belong to the category of invalids defined in paragraphs I-4 of this Article shall be entitled to a discount in the amount of an appropriate category of invalidity from this Article deduced by 20%.

#### IV. FUNDS AND WAYS OF PAYING THE PRICE OF APARTMENT

##### Article 24

Payment of purchase price of the apartment shall be done by one of the means of payment, as follows:

- cash,
- certificates based on citizen's claims, regulated by special regulations.

In case of cash payment, the price of an apartment shall be reduced by 20% of the determined purchase price.

##### Article 25

Cash payment of the price of the apartment may be agreed to be in full or by instalments, according to the choice of purchaser. If the payment is agreed to be in full, the payment deadline may not be longer than 30 days from the day of entering into the contract.

##### Article 26

The deadline for payment by instalments may not exceed 25 years, and shall be paid in 25 equal annual instalments with 1% annual interest. The Cantonal Government may prescribe a shorter period for payment by instalments, with a smaller interest rate.

##### Article 26a

If a buyer, after a certain number of instalment payment of the apartment price, settles for cash payment, the price he pays is decreased for interest rate that is accounted at the rate of 2% a year on instalments paid in advance, from Article 26 of this Law, calculated according to the method of interest calculations for a consumption loan.

#### V. REGISTRATION OF APARTMENT OWNERSHIP RIGHTS

##### Article 27

The ownership right to an apartment shall be acquired upon the registration in the Land Register.

If the purchaser contracted the payment in instalments the right to register the ownership in the Land Register shall be acquired upon the day of the payment of the first instalment, provided that the apartment may not be sold or disposed of in legal transactions with living persons until the day of the payment of the last instalment.

If a real property is not registered in the Land Register, the ownership right to the apartment shall be acquired upon submission of the contract to the Land Registry Service of the Court in whose jurisdiction the apartment is located and upon the registration in the record of submitted contracts held in the Court.

The way of setting up and keeping the submitted contracts record shall be regulated by a separate cantonal regulation.

##### Article 28

When the apartment is used by the families of dead soldiers, disabled war veterans, demobilised soldiers and expelled persons on the basis of a legal title, the purchaser of the apartment may establish a lease relation with that person, under conditions prescribed by a separate law regulating the lease of apartments. The lease relation from

paragraph 1 of this Article may not last longer than 3 years.

#### Article 29

The seller shall be obliged to submit for approval the contract on the sale of the apartment to the competent Public Attorney within 30 days from the day of entering into the contract.

If the Public Attorney finds that the agreed price of the apartment was not determined in accordance with the provisions of this Law, he/she shall invite the parties to amend the contract and thus bring the apartment price into compliance with the provisions of this law within 30 days from the day of receipt of the contract.

If the parties fail to comply, the Public Attorney shall file an action for the cancellation of the contract within 60 days from the day of the submission of the contract.

#### Article 30

The contracting parties shall be obliged to certify their signatures. The body competent for the certification of signatures shall certify the signatures of the parties upon the finding that the contract was submitted for approval to the competent Attorney General, which is to be confirmed on the back of the contract.

#### Article 31

The contract on the sale of the apartment by instalment payments must contain the purchaser's statement authorising the registration of mortgage on the purchased apartment on behalf of the seller, in the amount of the price and interest.

#### Article 32

The mortgage shall become valid upon the registration in the Land Register.

In the area for which land records are not kept the mortgage shall become valid upon the registration in the Book of Title Deeds or other book in which the mortgage on real property is registered.

When the court receives the request for registration, i.e. the registration of apartment ownership, it shall register ex officio the mortgage on behalf of the seller in the full amount of the price and interest.

#### Article 33

Occupancy right of the apartment of the holder thereof shall terminate on the day of entering into the apartment sales contract.

#### Article 34

Contract on the sale of the apartment concluded under the conditions prescribed by this law shall not be subject to sales taxation.

### VI. THE MANNER OF DISTRIBUTION OF FUNDS

#### Article 35

Income realised from the sale of apartments referred to in Article 13 of this Law shall be included in the municipal budget.

#### Article 36

Income realised from the sale of apartments referred to in Article 15 of this Law shall be allocated as follows:

- 80% to the cantons
- 20% to the Federation.

#### Article 37

Income realised from the sale of apartments referred to in Article 12 of this Law shall be allocated as follows:

- 90% of income to the enterprise or other legal entity for the purpose of giving credits under favourable conditions for purchasing apartments for their workers. If the enterprise or other legal entity does not need crediting under favourable conditions for purchasing apartments for their workers, the income from the preceding paragraph may be used for its development.
- 10% of income to the enterprise or other legal entity for the payment of costs caused by the sale of apartments.

Income realised from the sale of apartments referred to in paragraph 1, line I, of this Article shall be used by the enterprise for the given purposes until the day of approval of the privatisation programme by the competent privatisation agency.

Once the privatisation programme is approved to the enterprise, further instalment payments collected from the sale of apartments referred to in paragraph 1, line 1, of this Article shall be paid into the budget of the municipality and the town on the territory of which the apartment is located and shall be used for the development of the communal infrastructure.

#### Article 38

Entities realising income from the sale of apartments in accordance with Articles 36, 37 and 38 of this Law, shall allocate 70% of income to the cantonal fund for construction of apartments for family members of killed soldiers, disabled war veterans, demobilised soldiers and expelled persons.

The rights and liabilities of the cantonal funds for building the apartments will be determined by separate cantonal regulations.

#### Article 39

When concluding a contract on the sale of apartments under provisions of this Law, an occupancy right holder who concluded a contract on the purchase of the apartment on the basis of the Law on Security in JNA and the Law on Amendments to the Law on Rights and Obligations of the Federal Bodies Regarding Socially Owned Assets Used by Them (Official Gazette of the SFRY, No 84/90) shall be recognised the amount paid, calculated in DEM at the exchange rates valid on the day of the payment.

#### Article 39a

If the occupancy right holder of an apartment at the disposal of the Federation Ministry of Defence uses the apartment legally and s/he entered into a legally binding contract on purchase of the apartment with the SSNO before 6 April 1992 in accordance with the Law referred to in Article 39 of this Law, the Federation Ministry of Defence shall issue an order for the registration of the occupancy right holder as the owner of the apartment with the responsible court.

#### Article 39b

In the event that the occupancy right holder referred to in Article 39a of this Law did not effect the payment of the total amount of the sale price of the apartment in accordance with the sale contract, s/he shall pay the reminder of the amount specified in that contract to the Ministry of Defence of the Federation.

If the contract provided for the payment of the sale price in instalments, an annex to the contract shall be made regulating the payment of the remaining instalments and the creation and registration of a mortgage in accordance with this Law.

The provisions of Articles 39a of this Law and paragraph 1 and 2 of this Article shall also be applied to contracts on the purchase of apartments concluded before 6 April 1992, in cases where the verification of signatures has not been done before the responsible court.

#### Article 39c

The provisions of Articles 39a and 39b shall also be applicable to an occupancy right holder who has exercised the right to repossess the apartment pursuant to the provisions of the Law on the Cessation of Application of the Law on Abandoned Apartments ("Official Gazette of the FbiH", 11/98 and 18/99).

#### Article 39d

Person who does not realise his/her right under this Law with the Federation Ministry of Defence, may initiate a proceedings before the responsible court.

#### Article 39e

The occupancy right holder who is not entitled to the repossession of the apartment or does not submit a claim for the repossession of the apartment in accordance with the provisions of Article 3 and 3a of the Law on the Cessation of Application of the Law on Abandoned Apartments and who entered into a legally binding contract on the purchase of apartment with the SSNO before 6 April 1992, shall have the right to submit a request to the Federation Ministry of Defence for compensation of the funds paid on that basis, unless it is proved that these funds were acknowledged for purchase of an apartment outside the territory of Bosnia and Herzegovina.

## VII. SPECIAL PROVISIONS

#### Article 40

Legal status of apartments which are under construction and the manner of their privatisation shall be regulated by a special regulation to be passed by the competent Cantonal body.

For the purposes of this Law, the apartment under construction shall be understood to mean every newly built apartment on which a technical inspection has not been done and a positive statement on use of the apartment has not been given.

When passing this regulation, the competent Cantonal body shall consider the rights of an investor (contractor), level of construction, as well as other circumstances relevant for a fair solution.

#### Article 41

Upon a request of the seller or the purchaser, the responsible body which keeps the records on apartments shall be obliged to provide access to data relevant for the sale of the apartment.

#### Article 42

Maintenance of common parts of the building in which the apartments have been sold, as well as renting of the apartments for which the holders of the occupancy right have not submitted a request for sale, shall be regulated by a special Cantonal regulation.

### VIII. PENALTY PROVISIONS

#### Article 43

Legal entity - the seller of the apartment shall be fined for an offence by the amount from 1.000 KM to 10.000 KM :

1. if s/he does not act in accordance with the provision of Article 7 of this Law;
2. if s/he acts opposite to the provisions of Article 8a of this Law;
3. if he determines the price of the apartment in contravention of the provisions of Article 18 to 25 of this Law;
4. if he does not act in accordance with the provision of Article 29, paragraph 1 of this Law;
5. if he uses means acquired by sale of apartments for purposes which are opposite to provisions of Articles 35 to 38 of this Law. A responsible person within legal entity shall be fined for the offence referred to in paragraph 1 of this Article, by the amount from 500 KM to 1.000 KM.

#### Article 44

A responsible person within the competent body which keeps the record on apartments shall be formed for an offence by the amount from 500 KM to 1.000 KM if he does not act in accordance with provisions of Article 41 of this Law.

#### Article 45

Until the KM becomes operational, the fines foreseen in Articles 43 and 44 of this Law may be paid in DM or the same amount denominated in other currencies used in payment operations in the Federation of Bosnia and Herzegovina, at the average rate published by the competent financial institution on the date of payment.

### IX. FINAL AND INTERIM PROVISIONS

#### Article 46

Contracts on the use of apartment which were concluded under the Law on Housing Relations by the day of the entry into force of this Law, shall cease to be valid at latest within three years from the date of the entry into force of this Law.

Persons who acquired the occupancy right or the legal title to lawfully occupy the apartment in accordance with provisions of the Law on Housing Relations, by the expiry of the deadline referred to in Article 50 of this Law, shall have the right to purchase the apartment in accordance with the provisions of this Law.

#### Article 47

Provisions of this Law shall not be applied to the sale of privately owned apartments which have not been subject to nationalisation, on which the occupancy right has been acquired. Sale of apartments which are subject to restitution shall be regulated by a separate regulation on restitution.

#### Article 48

The residential building and apartments in the building which have been damaged during the war can not be subject to sale, if they do not provide permanent fitness, usability and safety of all basic parts of the building as a whole which are being used by all users of the building.

After having concluded the required procedure, the fitness of the building referred to in paragraph 1 of this Article, shall be determined by the administrative municipal body responsible for urban planning and civil engineering affairs.

#### Article 49

Cantonal Governments shall pass regulations referred to in Articles 18, 26 and 27 of this Law within 15 days from the date of the entry into force of this Law.

#### Article 50

Cantonal Assemblies shall pass regulations referred to in Articles 40 and 42 of this Law within two years from the date of the entry into force of this Law.

#### Article 51

This Law shall enter into force on the eight day of its publishing in the “Official Gazette of the Federation of Bosnia and Herzegovina” and shall be applied upon the expiration of 90 days after its entry into force.





## National Housing Rights Legislation



### Bosnia and Herzegovina

Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens (3 April 1998) (Bosnia and Herzegovina) <sup>(55)</sup>

#### I. GENERAL PROVISIONS

##### Article 1

From the day of the entry into force of this law, the Law on Temporary Abandoned Real Property Owned by Citizens (Official Gazette RBiH 11/93, 13/94 - hereinafter: the Law) and regulations regulating the issue of temporary abandoned property owned by citizens in the period between 30 April 1991 and the entry into force of this law, shall cease to be applied on the territory of the Federation of Bosnia and Herzegovina (hereinafter: the Federation).

##### Article 2

From the day of the entry into force of this Law, the bodies and authorities of the Federation and other bodies in the Federation ( hereinafter: the competent authorities) shall refrain from undertaking any new actions by which real property owned by citizens is declared abandoned or placed under municipal administration.

##### Article 3

Real property declared abandoned and placed under municipal administration on the basis of the Law on Temporary Abandoned Real Property Owned by Citizens shall remain under municipal administration until the return of the real property to the owner pursuant to the provisions of this Law.

##### Article 4

Owner of the real property declared abandoned shall have the right to file a claim for the return of the real property at any time.

##### Article 5

For the purpose of this Law, the owner shall be understood to mean a person which, according to the legislation in force, was the owner of the real property at the moment when that property was declared abandoned.

The owner of the real property may authorize another person to submit the claim for the return of the real property.

##### Article 6

The user to whom the real property has been allocated for temporary use on the basis of the Law on Temporary Abandoned Real Property (hereinafter: the temporary user), shall continue to use the real property under the conditions and in the manner which were prescribed by the Law on Temporary Abandoned Real Property, until the issuance of a decision under Article 12 of this Law.

##### Article 7

If a temporary user who has been ordered to vacate the property pursuant to the provisions of this Law has no possibility to return to the apartment in which he was living until 30 April 1991 and no other housing unit satisfying the requirements of emergency or appropriate accommodation has been provided to him/her, the competent service of the municipality on the territory of which s/he enjoyed the latest domicile or residence shall, within the deadline set by the decision for his/her vacation of the property, provide him/her with an emergency accommodation or an appropriate accommodation if, pursuant to Article 8(4) of the Law on Housing Relations, this person cannot be lodged in an emergency accommodation.

The authorities responsible to provide an emergency accommodation shall not be obliged to provide either an emergency or appropriate accommodation to persons occupying the property without a valid legal title.

In no event shall the failure of the municipality to meet its obligations under Paragraph 1 of this Article operate to delay the ability of the owner to reclaim his property.

##### Article 8

For the purposes of this Law, an emergency accommodation shall be understood to mean the emergency accommodation pursuant to Article 8 of the Law on Housing Relations (Official Gazette of SR BiH 4/84, 12/86, 36/89).

## Article 9

Parties in proceedings instituted at the owner's request for repossession of the real property shall be the owner of the real property and the temporary occupant at the time the request was submitted.

## II. RETURN OF REAL PROPERTY TO THE OWNER

### Article 10

The owner of private property has the right to claim at any time from the competent authorities the repossession of his/her property which has been declared abandoned or allocated for temporary use.

### Article 11

A claim for repossession of a property under Article 10 of this Law shall be filed by the owner to the competent municipal, city or cantonal administrative body competent for property - law affairs.

The claim shall be submitted in writing, signed by the owner or orally, in person by the owner or an authorized representative. A claim should include:

1. all necessary information on the property;
2. any evidence in possession of the claimant that the claimant is the owner;
3. the date when the owner intends to reoccupy the property.

The claim for repossession of property referred to in Paragraph 1 of this Article shall not be subject to the statute of limitations.

### Article 12

Upon the receipt of the owner's claim for the return of the property, the competent body shall issue a decision on the return of the property to the owner within a period of 30 days from the date of the receipt of the claim.

The decision referred to in paragraph 1 of this Article by which the owner's claim is accepted shall contain:

1. a decision terminating the municipal administration of the property as of the date of the intended return;
2. a decision on repossession of the property by the owner;
3. a decision terminating the right of the temporary user to use the property as of the date of the intended return of the owner;
4. a time limit for vacating the property by the temporary user or the person using the property without a valid legal title, or the time limit for returning the land;
5. a decision whether the temporary user is entitled to emergency accommodation.

The deadline for vacating the property, referred to in Paragraph 2(4) of this Article may not be shorter than 90 days from the date of the issuance of the decision, nor longer than the day of intended return of the owner and the day of intended return may not be earlier than 90 days from the date of submitting the claim for return of the property.

In exceptional circumstances, the deadline referred to in Paragraph 3 of this Article may be extended to up to one year if the municipality responsible for providing alternative accommodation in accordance with Article 7(1) of this Law provides detailed documentation regarding its efforts to secure alternative accommodation to the Federation Ministry of Urban Planning and Environment, and upon a finding by the Ministry that there exists a documented absence of available housing in the municipality.

In case of the return of arable land, the time limit referred to in Paragraph 2 (4) of this Article may be extended until the harvest is completed.

### Article 13

The competent authority must notify the owner of the property and the temporary user of the property.

Any appeal against the decision must be submitted to the cantonal administrative body competent for the property law affairs within 15 days from the date of receipt of the decision.

An appeal shall not suspend the execution of the decision.

### Article 14

A party affected by a decision made under Article 12 may at any time file a claim to the Commission for Real Property Claims of Displaced Persons and Refugees (GFAP, Annex 7 hereinafter the Property Commission).

In the event that a proceeding from Paragraph 1 of this Article is initiated, all other proceedings before the competent authorities, including the enforcement of decision referred to in Article 12 of this Law, shall be stayed pending the final decision of the Property Commission.

A decision of the Property Commission is final and binding.

Regarding the rights and obligations of a party referred to in Paragraph 1. of this Article, the decision of the Property Commission shall have the same legal force as a decision of any other competent authority made in accordance with this Law.

#### Article 15

The return of the property to the owner shall be witnessed by an official of the competent office of the municipality referred to in Article 11, paragraph 1 of this Law.

The return of the property and the entering into possession by the owner shall be recorded in the minutes including, among other things, a detailed description of the current state of the premises and the movable property therein.

#### Article 16

If the person occupying the property fails to voluntarily comply with the decision ordering him/her to vacate the property the competent authority shall employ compulsory enforcement, in accordance with the law.

The enforcement shall be carried out at the request of the owner.

#### Article 17

The proceedings for the repossession of real property by the owner as determined in this law and proceedings of the compulsory enforcement referred to in Article 16 of this law shall be carried out in accordance with the Law on General Administrative Procedure(Official Gazette 2/92 and 13/94) which is applicable in the territory of the Federation until the competent authorities decide otherwise, based on Article IX.5 (1) of the Federation Constitution.

#### Article 18

This law shall enter into force on the day following its publication in the “Official Gazette” of the Federation of Bosnia and Herzegovina.

No information on relevant legislative clauses is available from this country.

Should you have such information we would appreciate if you could forward this to [Housing.Policy@unhabitat.org](mailto:Housing.Policy@unhabitat.org)

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## National Housing Rights Legislation



**Greece**  
Constitution (1975)

Art. 21(4)

The provisions of housing to those who are homeless or live in inadequate housing conditions shall be the subject of special attention by the State.

No information on relevant legislative clauses is available from this country.

Should you have such information we would appreciate if you could forward this to [Housing.Policy@unhabitat.org](mailto:Housing.Policy@unhabitat.org)



## National Housing Rights Legislation



**Italy**  
Constitution (1947)

### Article 2 [Human Rights]

The republic recognizes and guarantees the inviolable human rights, be it as an individual or in social groups expressing their personality, and it ensures the performance of the unalterable duty to political, economic, and social solidarity.



No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### Portugal

Constitution (1976, revised 1997)

#### Article 65

##### Housing and urban planning

1. Everyone has the right, both personally and for his or her family, to a dwelling of adequate size, that meets satisfactory standards of hygiene and preserves personal and family privacy.
2. In order to ensure the right to housing, it is the duty of the State to:
  - a. Draw up and implement a policy for housing as a part of general national planning and to support plans for urban areas that guarantee an adequate network of transport and social facilities;
  - b. To promote, in conjunction with local authorities, the construction of economic and social housing;
  - c. Promote private building, when in the public interest, and access to privately owned or rented dwellings.
  - d. Encourage and support the initiatives of local communities for the resolution of their housing problems and for promoting the establishment of housing co-operatives and their own building projects;
3. The State shall adopt a policy for the institution of a system of rents that are compatible with family incomes and for individual ownership of housing.
4. The State, the autonomous regions and the local authorities shall determine the regulations on occupancy, use and transformation of urban land, specifically by way of planning instruments, within the framework of laws relating to national planning and urban planning and shall compulsorily acquire such land as is necessary to satisfy the purposes of urban public utility.
5. Interested parties shall be guaranteed participation in the drawing up of urban planning instruments and any other instruments for physical planning of the territory.

#### Article 72

##### Old age

1. Old people have the right to economic security and to conditions of housing and of family and community life that respect their personal autonomy and prevent or surmount their isolation and marginal position in society.
2. The policy for the old shall also include economic, social and cultural measures that aimed at providing old people with opportunities for self-fulfilment through active participation in the life of the community.

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### Serbia and Montenegro (Kosovo)

UNMIK Regulation No. 1999/23 (on the establishment of the Housing and Property Directorate and the Housing and Property Claims Commission) (15 November 1999)

The Special Representative of the Secretary-General,

Hereby promulgates the following:

#### Section 1 – Housing and Property Directorate

1. The Housing and Property Directorate (the “Directorate”) shall provide overall direction on property rights in Kosovo until the Special Representative of the Secretary-General determines that local governmental institutions are able to carry out the functions entrusted to the Directorate, in particular, the Directorate shall:
  - a. Conduct an inventory of abandoned private, state and socially owned housing;
  - b. Supervise the utilization or rental of such abandoned property on a temporary basis for humanitarian purposes; rental monies of abandoned private and socially owned property shall be recorded in a separate account in trust for the rightful owner, subject to deduction of relevant expenses;
  - c. Provide guidance to UNMIK, including CIVPOL, and UNHCR, as well as KFOR on specific issues related to property rights; and
  - d. Conduct research leading to recommended policies and legislation concerning property rights.
2. As an exception to the jurisdiction of the local courts, the Directorate shall receive and register the following categories of claims concerning residential property including associated property:
  - a. Claims by natural persons whose ownership, possession or occupancy rights to residential real property have been revoked subsequent to 23 March 1989 on the basis of legislation which is discriminatory in its application or intent;
  - b. Claims by natural persons who entered into informal transactions of residential real property on the basis of the free will of the parties subsequent to 23 March 1989;
  - c. Claims by natural persons who were the owners, possessors or occupancy right holders of residential real property prior to 24 March 1999 and who do not now enjoy possession of the property, and where the property has not voluntarily been transferred.

The Directorate shall refer these claims to the Housing and Property Claims Commission for resolution or, if appropriate, seek to mediate such disputes and, if not successful, refer them to the Housing and Property Claims Commission for resolution.

#### Section 2 – Housing and Property Claims Commission

1. The Housing and Property Claims Commission (the “Commission”) is an independent organ of the Directorate which shall settle private non-commercial disputes concerning residential property referred to it by the Directorate until the Special Representative of the Secretary-General determines that local courts are able to carry out the functions entrusted to the Commission.
2. The Commission shall initially be composed of one Panel of two international and one local members, all of whom shall be experts in the field of housing and property law and competent to hold judicial office. The Special Representative of the Secretary-General shall appoint the members of the Panel and shall designate one member as the chairperson. The Special Representative of the Secretary-General may establish additional Panels of the Commission in consultation with the Commission.
3. Before taking office, the members of the Commission shall make in writing the following solemn declaration:

“I solemnly declare that I will perform my duties and exercise my power as a member of the Housing and Property Claims Commission honourably, faithfully, impartially and conscientiously.”

The declaration shall be put in the archives of the Commission.
4. The Commission shall be entitled to free access to any and all records in Kosovo relevant to the settlement of a dispute submitted to it.
5. As an exception to the jurisdiction of local courts, the Commission shall have exclusive jurisdiction to settle

the categories of claims listed in section 1.2 of the present regulation. Nevertheless, the Commission may refer specific separate parts of such claims to the local courts or administrative organs, if the adjudication of those separate parts does not raise the issues listed in section 1.2. Pending investigation or resolution of a claim, the Commission may issue provisional measures of protection.

6. The Special Representative of the Secretary-General shall establish by regulation the Rules of Procedure and Evidence of the Commission, upon the recommendation of the Commission. Such rules shall guarantee fair and impartial proceedings in accordance with internationally recognized human rights standards. In particular, such rules shall include provisions on reconsideration of decision of the Commission.
7. Final decisions of the Commission are binding and enforceable, and are not subject to review by any other judicial or administrative authority in Kosovo.

#### Executive Director and Staff

The Special Representative of the Secretary-General shall appoint an Executive Director of the Directorate after consultation with the Executive Director of the United Nations Centre for Human Settlements (UNCHS) (Habitat). The Executive Director shall appoint the staff of the Directorate, which shall comprise local experts, and shall allocate staff to the Commission who shall be under the exclusive control of the Commission.

#### Applicable Law

The provisions of the applicable laws relating to property rights shall apply subject to the provisions of the present regulation.



## National Housing Rights Legislation



**Slovenia**  
Constitution (1991)

### Article 78

The State shall create the conditions necessary to enable each citizen to obtain proper housing.



## National Housing Rights Legislation



### Slovenia

#### Denationalization Law (1991, amended 1998)

[A person's rights to receive returned property are spelled out in the 1991 Denationalization Law, as amended in 1998. Slovenia's Constitutional Court emphasized that the purpose of the law is to correct injustices perpetrated by the state against property owners after the Second World War. The law does not cancel the nationalization legislation. For economic and political reasons, the Denationalization Law does not seek to restore the country to the pre-Second World War status quo regarding property, but to correct injustices - sometimes with cash compensation. Anyone whose property was nationalized may apply for redress. The government determines how much compensation is due, and whether it should be given in the form of physical property or money. These decisions are made on a case-by-case basis, and take into account such factors as the public interest, agricultural activity of the claimant and the means of acquisition.]



## National Housing Rights Legislation



### Spain Constitution (1978)

#### Art. 47

All Spaniards have the right to enjoy decent and adequate housing. The authorities shall promote the conditions necessary and establish pertinent norms to make this right effective, regulating the use of land in accordance with the general interest to prevent speculation. The community shall share in the increased values generated by urban activities of public bodies.

#### Art. 148

- (1) The Autonomous Communities can obtain competence in the following areas: ...
  - (3a) Regulation of land, urbanisation and housing.



No information on relevant legislative clauses is available from this country.

Should you have such information we would appreciate if you could forward this to [Housing.Policy@unhabitat.org](mailto:Housing.Policy@unhabitat.org)



## National Housing Rights Legislation



### **Austria** Constitution (1929)

#### Article 11

In the following matters, legislation is a federal responsibility, and the execution that of the Länder <sup>(61)</sup>: ...

(3) people's housing <sup>(62)</sup>.



## National Housing Rights Legislation



### **Belgium** Constitution (1994)

#### Article 23

Everyone has the right to lead a life consistent with human dignity. To that end, the laws, decrees or rules established under article 134 guarantee, taking into account the corresponding obligations, economic, social and cultural rights of which they determine the conditions for their implementation. These rights include, in particular,

- (3) The right to adequate housing.



## National Housing Rights Legislation



### **Belgium**

Law Onkelinx (1993)

[Enables the requisition of abandoned buildings and their transformation by the local authorities into dwellings for homeless people.] <sup>(22)</sup>



## National Housing Rights Legislation



### France Constitution (1958)

#### Article 55

Treaties or agreements regularly ratified or approved have, from the time of publication, an authority superior to that of laws, provided, in the case of each agreement or treaty, that it is applied by the other party.



## National Housing Rights Legislation



### France

Law 90/449 of 31 May 1990 (visant à la mise en oeuvre du droit au logement [‘Loi Besson’], France) [\(44\)](#)

#### Article 1.

The guarantee of a right to housing constitutes a duty of solidarity for the nation as a whole. Any person or family finding difficulties because of the inability of his resources to meet his needs has the right to collective assistance under conditions fixed by law that will ensure access to decent and independent housing where he can maintain himself.

#### Article 4.

The departmental plan, established for a definite duration, define the categories of persons who in enforcement of the first article, can be called to benefit from it;

This plan must grant priority to persons and families without any accommodation or those threatened with eviction who have nowhere to move, or those living in slums, precarious or insalubrious dwellings or improvised accommodation;

The plan analyses the needs and basic salary, per housing pool of inhabitants, the objectives to guarantee the attainment of housing by the centralisation of their requests for housing, the creation of a supplementary offer of houses and the establishment of financial aid and accompanying specific social measures

The departmental plan is made public by the President of the General Counsel and the Representatives of the State in the department in accordance with opinions of the Departmental Council of Integration.

#### Article 7.

The financing of the “funds of solidarity” for housing are guaranteed by the State and the Department.



## National Housing Rights Legislation



### France

Law 94-624 (1994) <sup>(41)</sup>

[Law 94-624 imposes legal obligations on the local authorities to provide urgent assistance to homeless people and those threatened by homelessness. The law commits departments to elaborating a plan for urgent accommodation of homeless and low-income people by 31 December 1994. Communes with 10,000 to 100,000 inhabitants are obliged to provide one place for the homeless per 2,000 of its inhabitants, and communes with more than 100,000 inhabitants, one emergency accommodation place for every 1,000 inhabitants.] <sup>(42)</sup>



## National Housing Rights Legislation



### France

Law Quillot (1982) <sup>(31)</sup>

[“Affirms the right to housing and aimed at bridging the controversy between economic rentability of housing and its affordability for tenants.”] <sup>(32)</sup>





## National Housing Rights Legislation



### France

#### Law for the Orientation of Cities and Towns (1991) <sup>(15)</sup>

[This law introduced qualitative changes in the global system of housing subventions and imposed financial solidarity between communes. Namely, one part of the state subsidies is directed from more prosperous to less developed communes which usually have greater needs for social housing. The law recommends that the State and the local communities coordinate such action for the development of local housing programmes. If such programmes are not elaborated, the prefect is authorized to modify urban planning documents in communes in which social housing accounts for less than 20 percent of the total housing stock to ensure that it becomes available. The law promotes the concept of diversification of housing with integration of social dwellings in the urban texture so as to avoid housing segregation of low-income groups.] <sup>(16)</sup>



## National Housing Rights Legislation



**France**

Law of 22 June 1982

The right to housing is a fundamental right.



## National Housing Rights Legislation



**France**

Law of 31 May 1990

The right to housing is a fundamental right.



## National Housing Rights Legislation



### Germany

Constitution of Bavaria (1946)<sup>(68)</sup>

#### Article 106. Right to Housing, Inviolability of the Home

- (1) Each resident of Bavaria has a claim for adequate housing.<sup>(64)</sup>
- (2) The responsibility for the construction of affordable social housing units is the duty of States and local governments.
- (3) The home is for everyone a free place and inviolable.<sup>(65)</sup>



## National Housing Rights Legislation



**Germany**  
Constitution of Berlin (1950)<sup>(69)</sup>

Article 19. Right to Living Space, Inviolability of the Home

(1) Everyone has the right to living space.



## National Housing Rights Legislation



### Germany

Constitution of Brandenburg (1992)<sup>[20]</sup>

#### Article 47. Housing

- (1) The State is obliged, within the framework of its powers, to provide for the realization of the right to adequate housing, in particular through the advancement of housing property, through measures of social housing construction, rental protection and housing subsidies.
- (2) The eviction from a dwelling shall only be carried out if alternative accommodation is provided.



## National Housing Rights Legislation



**Germany**

Constitution of Bremen (1947)<sup>(21)</sup>

### Article 14. Claim for Housing, Inviolability of the Home

- (1) Each resident of Bremen has a claim for adequate housing. It is the responsibility of the State and local governments to advance the realization of this claim.



## National Housing Rights Legislation



### Germany

Constitution of Mecklenburg-Vorpommern (1993)<sup>[72]</sup>

#### Article 17. Employment, Economy and Social Matters

- (3) State, local and municipal governments strive to ensure that everyone will have access to adequate housing space at their disposal. They will support, in particular, the construction of housing and the maintenance of existing housing space. They ensure everyone in the event of an emergency situation, basic shelter.





## National Housing Rights Legislation



**Germany**

Constitution of Sachsen (1992)<sup>[73]</sup>

### Article 7

- (1) The State recognizes the right of everyone to a dignified life, in particular in terms of employment, to adequate housing, to adequate welfare assistance, to social security and to education as an objective of the State.



## National Housing Rights Legislation



### Germany

Constitution of Sachsen-Anhalt (1992)<sup>[24]</sup>

#### Article 40. Housing

- (1) The State and local authorities have responsibilities to ensure support for the construction of housing, the maintenance of existing housing supplies and through other measures to guarantee dignified living space and adequate living conditions for everyone.
- (2) The State and the local authorities shall ensure that no one becomes homeless.



## National Housing Rights Legislation



### Germany

Constitution of Thüringen (1994)<sup>(25)</sup>

#### Article 15. State Objective: Adequate Housing

It is the permanent responsibility of the State to ensure that adequate housing is made available. In order to realize this objective, the State and local authorities will advance the construction and provision of housing within the contexts of social cooperatives and the private sphere.



## National Housing Rights Legislation



### Germany

#### The Basic Law (1949)

##### Article 14. Property, Right of Inheritance, Expropriation <sup>41</sup>

- (1) Property and the right of inheritance are guaranteed. Their content and limits shall be determined by law.
- (2) Property imposes duties. Its use should also serve the public weal.
- (3) Expropriation shall be permitted only in the public weal. It may be effected only by or pursuant to a law which shall provide for the nature and extent of the compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute regarding the amount of compensation, recourse may be had to the ordinary courts.



## National Housing Rights Legislation



### Germany

#### Federal Restitution Law of 1957

[Under the Federal Restitution Law of 1957, property remaining in Germany that had belonged to victims of racial and political persecution was returned to its former owners, and, in cases where owners had perished, to heirs or successor organizations, specifically the Jewish Claims Conference. For objects that no longer existed and thus could not be returned, compensation and indemnification were paid.]



## National Housing Rights Legislation



### Germany

#### Federal Statute on Social Clauses for Areas with Scarce Supply of Dwellings (1993)

##### Article 14.

The State governments are hereby empowered, through legislative rules, to designate areas in which the sufficient provision of the population with rental housing of adequate conditions in a municipality or part of a municipality is particularly scarce. If it is established that a tenant has a right to occupy particular rental accommodation, then the following provisions of Civil Code apply.



## National Housing Rights Legislation



### Germany

#### The Federal Welfare Assistance Act (1994)

[Section 15(a). The local sponsor of welfare assistance may, exercising due discretion, also pay rent arrears in order to maintain the dwelling and prevent homelessness.] [12](#)

[Section 72. Persons (including the homeless) who have special social difficulties, which they cannot themselves overcome, prevent them from participating in community life may claim assistance in particular situations. This assistance includes all measures necessary to avert, eliminate or ease the difficulties. This means, in particular, advice and personal attention for the applicant, as well as measures to help procure and maintain as dwelling.] [13](#)



## National Housing Rights Legislation



### Germany

#### German Act Regulating Unresolved Property of 1990

[The German Act Regulating Unresolved Property regulates unresolved issues of property and assets within the area of the former German Democratic Republic. The Act establishes a framework for the return of assets taken from individuals and associations between 30 January 1933 and 1990. In cases where restitution is not possible, compensation will be made for the loss of property in eastern Germany.]



No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



**Netherlands**  
Constitution (1984)

Art. 22.2

The public authorities have the duty of supplying proper housing.



## National Housing Rights Legislation



### Switzerland Constitution (1874)

#### Article 34(6).

1. The Confederation shall take measures aimed at encouraging the construction of housing, especially through a lowering of costs, and providing the opportunity for owning a dwelling or house. Federal legislation shall determine the conditions for giving assistance grants.
2. The Confederation shall have the following particular powers:
  - (a) to facilitate the obtaining and development of sites for housing construction;
  - (b) to support efforts aimed at improving housing and environmental conditions for families, persons with limited earning capacity, the elderly, the disabled, and persons in care;
  - (c) to research into the housing market and into building methods, and to encourage rationalization in building; and
  - (d) to ensure that capital is obtained for housing construction.
3. The Confederation is authorised to decree the necessary legal provisions for the development of sites intended for housing construction, as well as for rationalization in building.
4. Insofar as the nature of these measures exceeds the powers of the Confederation alone, the Cantons shall be called on to help carry them out.
5. The Cantons and other interested groups shall be consulted during the drafting of implementing legislation.

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



### Antigua and Barbuda Constitution (1981)

#### Article 3

Whereas every person in Antigua and Barbuda is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, regardless of race, place of origin, political opinions or affiliations, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-

- c. protection for his family life, his personal privacy, the privacy of his home and other property and from deprivation of property without fair compensation,

#### Article 9

1. No property of any description shall be compulsorily taken possession of, and no interest in or right to or over property of any description shall be compulsorily acquired, except for public use and except in accordance with the provisions of a law applicable to that taking of possession or acquisition and for the payment of fair compensation within a reasonable time.
2. Every person having a interest in or right to or over property which is compulsorily taken possession of or whose interest in or right to or over any property is compulsorily acquired shall have the right of access to the High Court for-
  - a. the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right and the amount of any compensation to which he is entitled; and
  - b. the purpose of obtaining payment of that compensation:

Provided that if Parliament so provides in relation to any matter referred to in paragraph (a) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right to or over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.

3. The Chief Justice may make rules with respect to the practice and procedure of the High Court or any other tribunal or authority in relation to the jurisdiction conferred on the High Court by subsection (2) of this section or exercisable by the other tribunal or authority for the purposes of that subsection (including rules with respect to the time within which application or appeals to the High Court or applications to the other tribunals or authority may be brought).
4. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section-
  - a. to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right-
    - i. in satisfaction of any tax, rate or due;
    - ii. by way of penalty for breach of the law or forfeiture in consequence of breach of the law;
    - iii. as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
    - iv. in the execution of judgements or orders of a court in proceedings for the determination of civil rights or obligations;
    - v. in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or likely to be injurious to the health of human beings, animals or plants;
    - vi. in consequence of any law with respect to the limitation of actions;
    - vii. for so long as may be necessary for the purposes of any examination, investigation, trial or enquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relation to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out), and except so far as the provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a

democratic society;

- b. to the extent that the law in question makes provision for the taking of possession or acquisition of any of the following property (including and interest in or right to or over property), that is to say-
  - i. enemy property;
  - ii. property of a deceased person, a person of unsound mind or a person who had not attained the age of eighteen years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;
  - iii. the property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
  - iv. property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or by order of a court for the purposes of giving effect to the trust.
5. Nothing contained in or done under the authority of any law enacted by Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory taking of possession of any property, or the compulsory acquisition of any interest in or right or over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no monies have been invested other than monies provided by Parliament or any legislature established for the former colony or Associated State of Antigua.
6. For the purposes of this section, "use" is "public" if it is intended to result or results in a benefit or advantage to the public and, without prejudice to its generality, includes any use affecting the physical, economic, social or aesthetic well-being of the public.



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## National Housing Rights Legislation



**Cuba**  
Constitution (1976)

### Article 42

The State sanctions the right won by the Revolution that all citizens, regardless of race, colour or national origin shall: ... Live in any sector, zone or district and stay in any hotel.



## National Housing Rights Legislation



**Cuba**  
Constitution (1992)

### Article 56

The home is inviolable. Nobody can enter the home of another against his will, except in those cases foreseen by law.



## National Housing Rights Legislation



### **Dominica** Constitution (1978)

#### Section 1

Whereas every person in Dominica is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:

- (c) Protection for the privacy of his home and other property and from deprivation of property without compensation.





## National Housing Rights Legislation



### **Dominica** Nationality and Racial Offences Act

#### Section 4.

- (1) Where the licence or consent of the landlord of or any other person is required for the disposal to any person of premises comprised in a tenancy that licence or consent shall be deemed to be unreasonably withheld if and so far as it is withheld on the ground of colour, race or ethnic or national origins.
- (2) Any covenant, agreement or stipulation which purports to prohibit the disposal of premises comprised in a tenancy to persons by reference to colour, race or ethnic or national origins shall be null and void.
- (3) In this section “tenancy” means a tenancy created by a lease or sub-lease, by an agreement for a lease or sub-lease or by a tenancy agreement or in pursuance to any enactment; and “disposal in relation to premises comprised in a tenancy includes assignment or assignation of the tenancy and subletting or parting with possession of the premises or any part of the premises.
- (4) This section applies to tenancies created before as well as after the passing of this Act; but does not apply to a tenancy of premises forming part of the dwelling house of which the remainder of part of the remainder is occupied by the person whose licence or consent is required, as his own residence.



## National Housing Rights Legislation



### **Dominican Republic** Constitution (1994)

#### Article 15

With the aim of strengthening its stability and well-being and its moral, religious and cultural life, the family shall receive the broadest possible protection from the State. ...

- (b) The establishment of every Dominican home on land or with improvements belonging to the occupant is declared to be of high social interest. To this end, the State shall encourage the development of public credit on advantageous terms, intended to make it possible for all Dominicans to possess a comfortable and sanitary home.

#### Article 17

The State shall encourage the progressive development of social security so that every person shall be able to enjoy adequate protection against unemployment, sickness, disability and old age.

The State shall also offer social assistance to the poor. This assistance shall consist of food, clothing, and, in so far as possible, adequate housing.



## National Housing Rights Legislation



### **Dominican Republic**

Decree 76-94 (1994)

Recognizing decrees 358-91 and 359-91 ... the environmental and ecological protection of the Izabel and Ozamo rivers ... and the urban and social improvement of the families who live along the rivers in these areas ... is of ...national interest.

[Recognizing] the importance of civil society participation, comprised of NGO's and community representatives. ... More than 12,500 houses will be constructed in Los Alcarizos, Guaricano, Sabana Perdida and Hainamosa, to house the families affected. ...

The urban and environmental reconstruction of the mentioned neighbourhoods [the North Zone] [shall be provided with] electrical energy, aqueducts, sewage systems and the cleansing of the mentioned rivers.



## National Housing Rights Legislation



### **Dominican Republic**

Decree 155-94 (1994)

The Dominican State has the obligation to provide the broadest possible protection possible for the stability of the Dominican family.

The 'sindico' of the National District is to carry out a census of all homes built in the North Zone on state land since October 1957, who were moved there originally, due to decree 3210-57 of 10 October 1957.

It is of social interest that the Dominican State ... give property title to all families who, up to the date of this decree, have built homes on the [mentioned lands] that were declared public property and of social utility via decree 3210-57.

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## National Housing Rights Legislation



**Haiti**  
Constitution (1987)

### Article 22

The State recognizes the right of every citizen to decent housing, education, food and social security.



## National Housing Rights Legislation



### **Jamaica** Housing Act (1968)

#### Section 4.

- (1) The Ministry of Construction (Housing) under the Act is supposed to construct houses for persons in the low-income categories.





## National Housing Rights Legislation



### Jamaica Rent Restriction Act (1983)

#### Section 25.

- (1) Subject to section 26, no order or judgment for the recovery of possession of any controlled premises, or for the ejection of a tenant therefrom shall, whether in respect of a notice to quit given or proceedings commenced before or after the commencement of this Act, be made or given unless:
- (a) some rent lawfully due from the tenant has not been paid for at least thirty days after it became due; or
  - (b) some other obligation of the tenancy (whether express or implied and whether under the contract of tenancy or under this Act) has been broken or not performed and, in the case of the non-performance of any such obligation by the tenant, has been in default for at least thirty days.
  - (c) the tenant or any person residing or lodging with him or being his sub-tenant has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers or has been convicted of using the premises or allowing the premises to be used for an immoral purpose or the condition of the premises has, in the opinion of the court, deteriorated or become unsanitary owing to acts of waste or by the neglect or default of the tenant or any such person, and, where such person is a lodger or sub-tenant has not, before the making or giving of the order or judgment, taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.
  - (d) the tenant has given notice to quit, and in consequence of that notice, the landlord has contracted to sell or let the dwelling house or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession; or
  - (e) the premises, being a dwelling house or a public or commercial building, are reasonably required by the landlord for:
    - (i) occupation as a residence for himself or for some person wholly dependent upon him or for any person bona fide residing or to reside with him or for some person in his whole-time employment; or
    - (ii) use by him for business, trade or professional purposes; or
    - (iii) a combination of the purposes in such paragraphs (i) and (ii); or
  - (f) the premises, for being building land, are reasonably required by the landlord for:
    - (i) the erection of a building to be used for any of the purposes specified in paragraph (e); or
    - (ii) use by him for business, trade or professional purposes not involving the erection of a building; or
    - (iii) a combination of such purposes; or
  - (g) the premises or any portions thereof, have been compulsorily acquired under the Land Acquisition Act, or are required for the purposes of an approved scheme under the Housing Act;
  - (h) the premises, being a dwelling house or a public or commercial building, are required for the purpose of being repaired, improved or rebuilt; or
  - (i) the premises, being a dwelling house, are required for occupation as a residence by a former tenant thereof who gave up occupation in consequence of his service in any of Her Majesty's Forces during the war; or
  - (j) the premises are required for public purposes; or
  - (k) the dwelling house, or the public or commercial building, or the building erected by the tenant on building land, as the case may be, is by law to be demolished; or
  - (l) the tenant has sub-let, or parted with the possession of, the whole or any part of the premises without either obtaining the consent of the landlord or being expressly authorized by or under the tenancy agreement or lease to do so; or
  - (m) the tenant has been offered by the landlord in writing a new tenancy at a higher rent which is permissible under this Act but otherwise on the same terms as the existing tenancy and failed to accept such offer in writing within a reasonable time; or
  - (n) a dwelling-house has been let to a tenant in the employment of the landlord on condition that the tenancy shall subsist only during the continuance of such employment, or only until the expiration of a period not

exceeding one month after the termination of such employment, and the employment has terminated, or such period has expired as the case may be; or

- (o) a dwelling-house has been let to a tenant in the employment of the landlord in consequence of that employment, and the employment has terminated or the landlord has offered the tenant alternative accommodation.

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## National Housing Rights Legislation



### **Saint Lucia** Constitution (1978)

#### Preamble

Whereas the people of Saint Lucia ...

- (e) Realize that human dignity requires respect for spiritual values; for private family life and property; and the enjoyment of an adequate standard of economic and social well-being dependent upon the resources of the State.



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## National Housing Rights Legislation



**Costa Rica**  
Constitution (1949)

### Article 65

The State shall promote the construction of low-cost housing and create a family homestead for workers.



## National Housing Rights Legislation



### **El Salvador** Constitution (1982)

#### Article 51

The law shall specify what enterprises and establishments, due to special conditions, are required to provide a worker and his family with suitable housing, schools....and other social services and attention necessary for their well-being.

#### Article 106

Expropriation will proceed because of public utility or social interest, legally proven and after a just indemnification. When expropriation is caused by the necessities of war or public disaster or if it is for the purpose of supplying water or electric power or for the construction of housing or roads, compensation need not be made in advance.

#### Article 119

Housing construction is declared to be a matter of social interest. The state shall endeavour to permit the greatest possible number of Salvadorian families to become homeowners. It shall undertake to see that every farm owner shall provide a sanitary and comfortable home for his workers and tenants, and shall provide facilities to enable small owners to do so.



## National Housing Rights Legislation



### Guatemala Constitution (1985)

#### Article 67. Protection of native agricultural lands and cooperatives

The lands of the cooperatives, native communities or any other forms of communal possession or collective or agrarian ownership, as well as the family heritage and popular housing shall enjoy the special protection of the State, credit assistance and preferential technology which may guarantee their ownership and development in order to ensure an improved quality of life to all inhabitants.

#### Article 105. Workers' Housing

Through specific entities, the State will support the planning and construction of housing projects, establishing adequate systems of financing that would make it possible to involve the different programmes so that the workers may opt for adequate housing and meet health requirements. The owners of enterprises are obliged to make available to their workers — in cases established by law — the housing units that meet the above-mentioned requirements.

#### Article 119

The following are basic obligations of the state:

- (g) To promote on a priority basis the construction of popular housing through systems of financing so that a larger number of Guatemalan families may have title to it. When resulting or cooperatively-held housing is involved, the system of land tenure may be different.





## National Housing Rights Legislation



### Guatemala

Accord for the Resettlement of the Populations Uprooted by the Armed Confrontation (17 June 1994)

#### Objectives:

To guarantee to the displaced population the full exercise of all their fundamental rights and liberties, in particular those rights and liberties which were affected by the process of displacement. To develop and strengthen the democratization of state structures which will guarantee the exercise by the displaced populations of their constitutional rights and obligations on community, municipal, departmental regional and national levels.



## National Housing Rights Legislation



### Honduras Constitution (1982)

#### Article 118

The homestead shall be the subject of special legislation designed to protect and further it.

#### Article 123

All children shall enjoy the benefits of social security and education. Every child shall have the right to grow and develop in good health, for whom special care shall be given during the prenatal period, as much for the child as for the mother, both being entitled to food, housing, education, recreation and adequate medical services.

#### Article 141

The law shall determine which employers, according to their capital and the total number of workers, shall be required to provide them and their families with educational, health, housing and other services.

#### Article 178

The right of Hondurans to dignified housing is recognized. The State will formulate and exercise housing programs in the social interest. The law will regulate the renting of housing and premises, the use of urban areas and construction, in accordance with the general interest.

#### Article 179

The State will promote, support and regulate the creation of systems and mechanisms for the use of internal and external resources for the solution of the housing problem.

#### Article 180

All internal and external credits and loans obtained by the State for housing shall be regulated by law for the benefit of the ultimate user of the credit.

#### Article 181

The social fund for housing is hereby created. Its purpose shall be to develop housing in urban and rural areas. A special law shall regulate its organization and functioning.

#### Article 345

Agrarian reform is an essential part of the overall development strategy of the nation and therefore any other economic and social policies that the government may approve shall be formulated and executed in harmony with it, especially those related, inter alia, to education, housing, employment, infrastructure, marketing and technical and credit assistance.



## National Housing Rights Legislation



### Mexico Constitution (1917)

#### Article 4

Every family has the right to enjoy decent and proper housing. The law shall establish the instruments and necessary supports to reach said goal.

#### Article 123

(Sec. A, Subsec. XII) Every agricultural, industrial, mining or other sort of enterprise shall be obliged, as may be laid down in the laws governing this matter, to provide comfortable and hygienic housing for its workers. This obligation shall be met by means of the contributions made by the enterprise to a national housing fund in order to build up deposits in favour of their workers and establish a financing system enabling cheap credit to be granted to them sufficient for them to become owners of such housing. It is considered that it would be in the public interest to adopt a law establishing a body made up of representatives of the Federal Government, the workers and the employers to administer the resources of the national housing fund. The law in question shall lay down the forms and procedures to be followed by the workers if they wish to become owners of the housing aforementioned.

(Sec. A, Subsec. XXX) Cooperative societies for building cheap and hygienic dwellings intended to be bought by workers on an instalment plan shall be deemed to be of public interest.

(Sec. B(f), Subsec. XI) [Lays down the right to housing for workers employed by the Federal Authorities and the Government of the Federal District.]<sup>126</sup>



## National Housing Rights Legislation



### Nicaragua Constitution (1987)

#### Article 26

All persons have the right to:

- (1) privacy and the privacy of their family;
- (2) the inviolability of their home, correspondence, and communications;...

#### Article 64

Nicaraguans have the right to decent, comfortable and safe housing that guarantees familial privacy. The State shall promote the fulfilment of this right.



## National Housing Rights Legislation



### **Panama** Constitution (1978)

#### Article 109

The State shall establish a national housing policy with the purpose of ensuring the enjoyment of this social right to all of the population, especially low-income groups.



## National Housing Rights Legislation



### Argentina Constitution (1994)

#### Article 14

The State shall grant the benefits of social security, which shall be complete and irrenounceable. In particular, the State shall establish: compulsory social security, which shall be in the charge of national or provincial entities with financial and economic autonomy, administered by the interested parties with the participation of the State, but there can be no overlapping of contributions; flexible retirement pay and pensions; full protection of the family; protection of the family welfare; economic compensation to families and access to decent housing.

#### Artículo 22

Aprobar o desechar tratados concluidos con las demás naciones y con las organizaciones internacionales y los concordatos con la Santa Sede. Los tratados y concordatos tienen jerarquía superior a las leyes. La Declaración Americana de los Derechos y Deberes del Hombre; la Declaración Universal de Derechos Humanos; la Convención Americana sobre Derechos Humanos; el Pacto Internacional de Derechos Económicos, Sociales y Culturales; el Pacto Internacional de Derechos Civiles y Políticos y su Protocolo Facultativo; la Convención sobre la Prevención y la Sanción del Delito de Genocidio; la Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial; la Convención sobre la Eliminación de todas las Formas de Discriminación contra la Mujer; la Convención contra la Tortura y otros Tratos o Penas Crueles, Inhumanos o Degradantes; la Convención sobre los Derechos del Niño: en las condiciones de su vigencia, tienen jerarquía constitucional, no derogan artículo alguno de la primera parte de esta Constitución y deben entenderse complementarios de los derechos y garantías por ella reconocidos. Solo podrán ser denunciados, en su caso, por el Poder Ejecutivo nacional, previa aprobación de las dos terceras partes de la totalidad de los miembros de cada Cámara. Los demás tratados y convenciones sobre derechos humanos, luego de ser aprobados por el Congreso, requerirán del voto de las dos terceras partes de la totalidad de los miembros de cada Cámara para gozar de la jerarquía constitucional.

[Establishing that international treaties, including the International Covenant on Economic, Social and Cultural Rights, are incorporated into, and indeed trump, domestic law.]



## National Housing Rights Legislation



### **Bolivia** Constitution (1967)

#### Article 158

The State has the obligation to defend human capital by protecting the health of the population; it shall ensure the continuity of its means of livelihood and the rehabilitation of disabled persons; it shall also strive for the improvement of the living conditions of the family as a group.

The social security system shall be based on the principles of universal coverage, solidarity, uniformity of treatment, economy, timeliness and effectiveness, embracing the contingencies of illness, maternity, occupational hazards, disability, old age, forced shutdown, family allocations and social housing.

#### Article 199

The State shall protect the physical, mental and moral health of children, and shall uphold the rights of children to a home and to an education.



## National Housing Rights Legislation



**Bolivia**

Act No. 1493 (17 September 1993)

### Article 19(f).

[The Ministry of Human Development maintains responsibility in the] formulation, implementation and supervision of policies and programmes in: ... urban development, with promotion of the construction of subsidized housing and attention to the problems of urban and rural marginalization.





## National Housing Rights Legislation



**Bolivia**

Act No. 23660 Regulating the Ministries Act (12 October 1993)

Article 79.

[One of the aims of the National Secretary for Urban Affairs is] ... to promote urban development policy and access by the population to adequate housing.



## National Housing Rights Legislation



### **Bolivia**

Supreme Decree No. 22407 (19 February 1990)

[Chapter VI of which calls for the implementation of a National Housing Plan to diminish the country's housing deficit, particularly through the organization of the Low-Cost Housing Plan.] [↗](#)



## National Housing Rights Legislation



### **Bolivia**

Supreme Decree No. 23261 (15 September 1992)

[“The State has created facilities to enable the maximum number of persons to accede to housing of their own, such as the National Subsidized Housing Fund (FONVIS) set up under Supreme Decree No. 23261 of 15 September 1992 with the primary aim of reducing the housing deficit.”] [uu](#)



## National Housing Rights Legislation



### Brazil Constitution (1988)

#### Article 7

The following are rights of both urban and rural workers, in addition to other rights directed toward improving their lot in society:

- (IV) A minimum wage established by law and unified on a nationwide basis; such wages to be capable of meeting the basic necessities of life of the worker and his family, in terms of housing, food, education, health care, leisure, clothing, hygiene, transportation, and social security; it shall be subject to periodic readjustments that preserve its purchasing power and may not be used as a reference value for any purpose.

#### Article 21

It shall be the competence of the Federal Government to:

- (XX) establish guidelines for urban development, housing, infrastructure and transport.

#### Article 23

The Union, the States, the Federal District and the Municipalities have a mutual responsibility to:

- (IX) promote housing construction programmes and the improvement of living and basic sanitation conditions.

#### Article 182

The urban development policy, applied by the Municipal government, in conformity with the law, has the objective to order the complete development of the social functions of the city and to provide for the welfare of its inhabitants.

...

#### Article 183

An individual who possesses an urban area <sup>(art. 183)</sup> of up to 250,000 square metres, for a continuous period of at least five (5) years, without claim for housing will be able to have domain over it unless he/she has another urban or rural property.

- (1) The registration of domain and the right to use will be given to a man or woman, or both, regardless of their civil status.
- (2) This right will not be given to the same individual more than once.

#### Article 187

Agricultural policy shall be planned and implemented pursuant to law, with regular participation in that process by the production sector — involving both rural producers and workers — as well as by the marketing, warehousing and transportation sectors, considering the following in particular:

- (VIII) Housing for the rural worker.

#### Article 200

The unitary health system has authority to perform the following functions, in addition to any other prerogatives, pursuant to law:

- (IV) Participate in formulating policy and implementing actions in the area of basic sanitation services.

#### Article 203

Social assistance shall be furnished to whomever may need it, regardless of whether they have contributed to social security. The objectives of this service are as follows:

- (II) Shelter for needy children and adolescents.



## National Housing Rights Legislation



### Brazil

#### Statute of the City, Law No. 10-257 (June 2001)

[City Statute, establishes norms for public order and social interest which regulate the use of urban property in favour of the common good, safety and well-being of citizens, as well as environmental equilibrium.]

#### Article 2

The purpose of urban policy is to give order to the full development of the social functions of the city and of urban property, through the following general guidelines:

- I - guarantee the right to sustainable cities, understood as the right to urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, to work and leisure for current and future generations; ...
- XV - simplification of the legislation concerning subdivisions, land use, occupation and building regulations, in order to permit a reduction in costs and increase in the supply of lots and housing units;

#### Article 3

It is the responsibility of the Federal Government, in addition to its other attributions related to urban policy: ...

- IV - institute guidelines for urban development, including housing, basic sanitation, and urban transportation;

#### Article 3

It is the responsibility of the Federal Government, in addition to its other attributions related to urban policy:

- III - promote, through its own initiative and in conjunction with the States, the Federal District and the municipalities, housing construction programs and the improvement of housing conditions and basic sanitation;

#### Section V: Special usucapion rights for urban property

#### Article 9

Someone who has possession of an urban area or building of up to two hundred and fifty square meters, for five years, uninterruptedly and without contestation, who uses it for their residence or that of their family, can establish their dominion, as long as they are not the owner of any other urban or real estate.

- § 1<sup>o</sup> The title of dominion will be conferred to the man or woman, or both, whether or not they are married or single.
- § 2<sup>o</sup> The rights granted in this article will not be recognized to the same possessor more than once.
- § 3<sup>o</sup> For the purposes of this article, the legitimate heir, continues to have full rights to the possession of their predecessor as long as they reside in the property at the time it was left open to succession.

#### Article 10

Urban areas with more than two hundred and fifty square meters, occupied by the low income population for their housing, for five years, uninterruptedly and without opposition, where it is not possible to identify the land occupied by each possessor, are susceptible to collective usucapions, as long as the possessors are not owners of other urban or rural property.

- § 1<sup>o</sup> The owner can, in order to count the time period required by this article, add to his possession that of his predecessor, as long as the contact is continuous for both.
- § 2<sup>o</sup> The special collective usucapion of urban real estate will be declared by the judge, through a sentence, which will serve as title to register in the real estate deeds office.
- § 3<sup>o</sup> In the sentence, the judge will attribute an equal ideal portion of the land to each possessor, independently of the size of the land that each occupies, except in the case of a written agreement among the condominiums, establishing differentiated ideal portions.

§ 4. The special condominium constituted is indivisible and cannot be terminated except by favorable determination made by at least two thirds of the members of the condominium, in the case of the execution of urbanization after the constitution of the condominium.

§ 5. The determinations related to the administration of the special condominium will be taken by a majority of votes of the condominium members present, requiring the others to comply with the decision, whether or not they agree or were absent.

#### Article 11

While the special urban action for usucapion is pending, any other actions, petitions, or possessions that come to be proposed relative to the real estate subject to usucapion will be stayed,

#### Article 12

Legitimate parties for the proposal of an action for special urban usucapion include:

I - the possessor, in isolation, in group or supervenient;

II - the possessors, in a state of co-possession;

III - as a processual substitute, an association of community residents, duly established, with legal standing, as long as it is explicitly authorized by those it represents.

§ 1. In the action of special urban usucapion, intervention by the Attorney General is required.

§ 2. The author should have all the benefits of the courts and of free legal assistance, as well as in the real estate deeds office.

#### Article 13

Special usucapion for urban real estate can be invoked as a matter of defense, with the sentence that recognizes it considered valid title to be registered in the real estate deeds office.

#### Article 14

In the legal action of special urban real estate usucapion, the processual writ to be observed is a summary action.



## National Housing Rights Legislation



### Brazil

Statute of the City, Provisional Measure No. 2.220 (4 September 2001)

#### CHAPTER I: OF THE SPECIAL USE CONCESSION

##### Article 1

Whomever, until June 30, 2001, possesses as his or her own, for five years, without interruption and without opposition, up to two hundred and fifty square meters of public real estate located in an urban area, using it for their own residence or that of their family, has the right to concession of special use for housing purposes in relation to the property that is the object of said possession, as long as he is not the owner or concessionaire, in any form, of any other urban or rural real estate.

- § 1º The concession for special use for housing purposes will be conferred free of charge to the man or woman, or both, independent of their marital status.
- § 2º The right established by this article shall not be recognized to the same concessionaire more than once.
- § 3º For the purposes of this article the legitimate heir, can continue, with complete rights, on the possession of his or her predecessor, as long as he or she resided in the property since the time of the opening of the succession.

##### Article 2

In the properties indicated in art. 1o, with more than 250 square meters, which, until June 30, 2001, were occupied by a low income population for housing purposes, for five years, uninterruptedly and without opposition, where it was not possible to identify the land occupied by each possessor, the special use concession for housing purposes will be conferred in a collective form, as long as the possessors are not property owners or concessionaires, in any way, of other urban or rural property.

- § 1º The possessor can, in order to calculate the period required by this article, add to their possession that of their predecessor, as long the contact was continuous to both.
- § 2º In the special use concession established by this article, an equal ideal fraction of land will be attributed to each possessor, independently of the size of the land that each occupies, unless there is a written accord among the occupants, establishing distinct ideal fractions.
- § 3º The ideal fraction attributed to each possessor cannot be superior to two hundred and fifty square meters.

##### Article 3

The option to exercise the rights established in arts. 1o and 2o will also be guaranteed to the occupants, regularly inscribed, in public real estate, of up to two hundred and fifty square meters, of the Federal government, the States, the Federal District and the municipalities, which are located in an urban area, as determined by the regulation.

##### Article 4

In a case where the occupation involves a risk to the lives or to the health of the occupants, the government will guarantee the possessor the exercise of the right established by arts. 1o and 2o in another location.

##### Article 5

The Government is responsible for assuring the exercise of the rights established in arts. 1o and 2o in another location in the case of occupation of the real estate:

- I - for common use of the people;
- II - destined for an urbanization project;
- III - of interest for national defense, environmental preservation and protection of natural ecosystems;
- IV - reserved for construction of reservoirs and related works; or
- V - located in a communication route.

##### Article 6

The title for special use concession for housing purposes will be obtained by the administrative route through the competent Public Administrative organ, or, in case of its refusal or omission, by judicial decree.

- § 1. The Public Administration will have a maximum period of 12 months to determine the request, counting from the date it is received.
- § 2. In the case of a real estate property of the federal government or the states, the interested party must instruct the requirement for special use concession for housing purposes with a certificate issued by the municipal government, which attests that the real estate is located in an urban area and is destined for the housing of the occupant or his or her family.
- § 3. In case of legal action, the special use concession for housing purposes will be declared by a judge, through a sentence.
- § 4. The title issued by administrative procedure or judicial sentence will serve for the purpose of the registration in the real estate deeds office.

#### Article 7

The right to special use concession for housing purposes is transferable inter vivos or because of death.

#### Article 8

The right to special use concession for housing purposes is extinguished in the case:

- I - the concessionaire uses the real estate for a purpose other than for housing for themselves or for their family; or
- II - the concessionaire acquires the property or the use concession of another urban or rural real estate.  
Sole paragraph. The termination indicated in this article will be recorded in the real estate deed office, by means of a declaration of the issuing public authority.

#### Article 9

It is the responsibility of the competent public authority to authorize the use to whom, until June 30, 2001, possesses as his own, for five years uninterruptedly and without opposition, up to two hundred and fifty square meters of public real estate located in an urban area, using it for commercial purposes.

- § 1. The authorization for use determined by this article is conferred free of charge.
- § 2. The possessor can, for the purpose of counting the period required by this article, add to his possession that of his predecessor, as long as the contact is continuous for both.
- § 3. The authorization for use called for in the caput of this article, is subject to the dispositions of arts. 4o and 5o of this Provisional Measure.



No information on relevant legislative clauses is available from this country.

Should you have such information we would appreciate if you could forward this to [Housing.Policy@unhabitat.org](mailto:Housing.Policy@unhabitat.org)



## National Housing Rights Legislation



### Colombia Constitution (1991)

#### Article 51

All Colombian citizens are entitled to live in dignity. The State will determine the conditions necessary to give effect to this right and will promote plans for public housing, appropriate systems of long-term financing, and community plans for the execution of these housing programmes.

#### Article 64

It is the duty of the State to promote the gradual access of agricultural workers to landed property in individual or associational form and to services involving education, health, housing, social security, recreation, credit, communications, the marketing of products, technical and management assistance with the purpose of improving the incomes and quality of life of the peasants.

#### Article 366

The general welfare and improvement of the population's quality of life are social purposes of the State. A basic objective of the State's activity will be to address unsatisfied public health, educational, environmental, and potable water needs. For this purpose, public social expenditures will have priority over any other allocation in the plans and budgets of the nation and the territorial entities.

#### Article 367

Home public services shall be provided directly by each municipality when the technical and economic characteristics of the service and the general benefits permit it and make it advisable and the departments shall carry out support and coordination functions.



## National Housing Rights Legislation



**Colombia**

Act No. 56 of 1985

### Article 1.

[Article 1 recognizes the right to housing of the Colombian family as an obligation of the State, a right which is necessary for the life and economic development of the community and responds to the need to harmonize the exercise of the right of ownership and its use with the public interest. Article 2 provides that a contract for rented urban accommodation is one by which two parties enter into reciprocal obligations, on the one hand to grant the total or partial enjoyment of an urban building intended for housing, and on the other to pay a specified price for such enjoyment.] <sup>(6)</sup>

### Article 24.

When eviction proceedings are initiated, as provided for under article 434 of the Code of Civil Procedure, in addition to the requirements noted therein, the following shall be taken into account:

- (i) When the defendant cannot be notified in person of the court order accepting the application within two (2) days from the date of its issue, a notice to that effect shall be posted in the entrance of the building;
- (ii) The preliminary pleas referred to in article 97 of the Code of Civil Procedure for this kind of eviction proceedings must be entered within the time-limit set for service of process;
- (iii) In the cases referred to in articles 434, sec. 10.337 and 338 of the Code of Civil Procedure, both parties shall furnish security for costs within five (5) days of the date of proceedings, equivalent to two (2) rental fees, guaranteeing compensation for any prejudice caused.



## National Housing Rights Legislation



**Colombia**

Act No. 7 of 1978 for the Protection of Children

### Article 7.

Every child has a right to medical care, to access to culture and sport, and to live in the home of a family. A sick child has the right to rehabilitation and to be among the first to receive assistance in the event of a disaster.



## National Housing Rights Legislation



### Colombia

#### Decree 2154 (1993)

[Decree 2154 deals with the case of legal entitlement as one of the solutions to the problem of housing for which the family housing allowance can be granted. According to article 19, legal entitlement is the set of measures whereby a person able to benefit from such a solution may be granted ownership of the property in question and register it in the property register of the locality as appropriate, in accordance with the provision contained in chapter IV of Act 3a of 1991.] [\[13\]](#)



## National Housing Rights Legislation



### **Ecuador** Constitution (1998)

#### Article 23

Without prejudice to the rights established in this Constitution and the effective international instruments, the State will recognize and guarantee to the people the following rights:

- (20) The right to a quality of life that assures health, food and nutrition, potable water, a clean environment, social education, work, use, recreation, housing, dress and other necessary social services.

#### Art. 32

- In order to make effective the right to housing and the conservation of the environment, the municipalities may expropriate, reserve and control areas for future development, in accordance with the law.

The State will promote housing programmes in the public interest.

No information on relevant legislative clauses is available from this country.

Should you have such information we would appreciate if you could forward this to [Housing.Policy@unhabitat.org](mailto:Housing.Policy@unhabitat.org)

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## National Housing Rights Legislation



**Guyana**  
Constitution (1980)

### Article 26

Every citizen has the right to proper housing accommodation.



## National Housing Rights Legislation



### Paraguay Constitution (1992)

#### Article 57

About Senior Citizens: Every senior citizen has the right to receive full protection by his family, society, and the State. State organizations will promote the well-being of senior citizens by providing them with social services to meet their needs for food, health, housing, culture, and leisure.

#### Article 59

About Family Property: Family property is hereby recognized as an institution of a social interest. The law will implement a system under which it will operate. Family property will consist of the family house or estate and its furniture and working tools, which cannot be subjected to any attachment.

#### Article 100

About the Right to Housing:

- (1) Every inhabitant of the Republic has the right to decent housing facilities.
- (2) The State will establish conditions conducive to the implementation of this right and will promote housing projects of social interest specially designed for low-income families through adequate methods of financing.



## National Housing Rights Legislation



**Peru**  
Constitution (1993)

### Article 2

All persons have the right ...

- VIII. To the inviolability of the home. No one may enter the home or make investigations or entries in the public register without authorization from the person living in the home or judicial mandate, except for crimes in the act of commission or very serious possibility of their immediate perpetration. Exceptions based on health or serious risk of harm are regulated by law.



## National Housing Rights Legislation



### Peru

#### Law for the Promotion of Access to Formal Property Legislative Decree No. 803 (1996)

[The Peruvian Law for the Promotion of Access to Formal Property (Ley de Promoción del Acceso a la Propiedad Formal – Decreto Legislativo N.º 803) declares that providing Peruvian citizens access to formal property, and providing a mechanism for the registration of property, are in fact matters of national importance. The law further recognizes that such measures are necessary to the protection of the basic property rights of citizens. To this aim, Title 1, Article 2 of the law provides for the creation of an autonomous Commission for the Formalization of Informal Property (Comisión de Formalización de la Propiedad Informal – COFOPRI) which has responsibility, inter alia, for formulating, approving and executing a Programme for the Formalization of Property (as stipulated in Title 1, Article 3). The law also addresses the reorganization of administrative procedures and processes for the formalization of property (Title 2), the appropriation of state lands for the purposes of providing housing (Title 3), and other complementary provisions (Title 4).

English translation is unavailable at this time. The full Spanish text appears below.]

#### Ley de Promoción del Acceso a la Propiedad Formal

#### Decreto Legislativo N.º 803 (1996)

#### EL PRESIDENTE DE LA REPUBLICA

#### POR CUANTO:

La propiedad predial constituye la mayor parte de los activos de los peruanos de menores recursos y, sin embargo, no puede ser utilizada en el mercado legal pues carece de un título debidamente registrado que le confiera valor de intercambio;

Los procedimientos vigentes que debe cumplir esta mayoría de peruanos para titular y registrar sus activos constituyen un régimen discriminatorio que los obliga a perder muchos años en trámites y realizar un cuantioso gasto;

Los títulos otorgados por los procedimientos vigentes han carecido del valor suficiente para movilizar créditos e inversiones en servicios básicos sostenibles;

Es necesario crear un sistema único de formalización de la propiedad que permita la incorporación de los activos de la mayoría de los peruanos a una economía social de mercado para que puedan ser identificados, ubicados y representados en instrumentos de aceptación universal, regidos por un marco institucional que facilite su intercambio;

El sistema generara el incremento del valor de los predios de los peruanos de menores recursos;

Sin acceso a la formalización de sus activos principales, la mayoría de los peruanos no puede beneficiarse plenamente de la nueva política económica, que incluye estabilización de la moneda y privatización;

La mayoría de los peruanos al no contar con un acceso legal efectivo a la propiedad predial recurre al acceso extra legal, como la invasión, atentando contra la seguridad de los pocos que han logrado registrar su propiedad y propiciando la apropiación ilícita de los servicios básicos, sobre todo luz y agua;

El Congreso de la Republica, mediante Ley N.º 26557 ha transferido al Poder Ejecutivo las competencias y procedimientos municipales relacionados con la adjudicación, el saneamiento físico-legal, la titulación y la habilitación urbana, otorgándole la facultad de legislar por un plazo de 120 días el saneamiento físico-legal, de asentamientos humanos en terrenos de propiedad fiscal, municipal o privada mediante la reforma de las competencias, de las entidades publicas y de los procedimientos relacionados con la formalización de la propiedad en todas sus etapas, así como la creación de un organismo especializado encargado de diseñar y ejecutar un programa nacional de formalización que incluya el reconocimiento, la adjudicación, el saneamiento físico-legal, la titulación, la habilitación urbana y el registro de la propiedad predial de la población de menores recursos, así como sobre normas relacionadas a impuestos, contribuciones, aportaciones y demás tributos;

Asimismo, el Congreso de la Republica mediante la Octava Disposición Transitoria y Final de la Ley N.º 26533 ha delegado facultades legislativas al Poder Ejecutivo por un plazo de 360 días para llevar a cabo un proceso de

modernización integral en la organización de las entidades que lo conforman;

Con el voto aprobatorio del Consejo de Ministros; y

Con cargo a dar cuenta al Congreso de la Republica;

Ha dado el Decreto Legislativo siguiente:

## LEY DE PROMOCION DEL ACCESO A LA PROPIEDAD FORMAL

### TITULO I

#### DE LA ENTIDAD PROMOTORA DEL ACCESO A LA PROPIEDAD FORMAL

##### Artículo 1.-

Declarase de interés nacional la promoción del acceso a la propiedad formal y su inscripción registral con el fin de garantizar los derechos de todos los ciudadanos a la propiedad y al ejercicio de la iniciativa privada en una economía social de mercado, establecidos por el inciso 16) del Artículo 2º. y los Artículos 58º. y 70º. de la Constitución Política.

##### Artículo 2.-

Crease la Comisión de Formalización de la Propiedad Informal (COFOPRI), como organismo rector máximo encargado de diseñar y ejecutar de manera integral, comprensiva y rápida un Programa de Formalización de la Propiedad y de su mantenimiento dentro de la formalidad, a nivel nacional, centralizando las competencias y toma de decisiones a este respecto.

La inscripción de los títulos de propiedad formalizados por COFOPRI se realizara en el Registro Predial Urbano a que se refiere el Artículo 10º. de la presente Ley.

COFOPRI constituye un pliego presupuestal con autonomía técnica, funcional, administrativa, económica y financiera. Sus integrantes son designados mediante Resolución Suprema y reportaran directamente al Presidente de la Republica. Será presidida por un Ministro de Estado, que ejercerá la titularidad del pliego presupuestal.

La presente ley crea un nuevo mecanismo institucional que permitirá que la propiedad predial de los sectores informales de menores recursos se pueda convertir en activos líquidos que puedan integrarse al mercado y ser objeto de transacciones; incrementando el valor de las propiedades y posibilitando a sus propietarios el acceso a los servicios de infraestructura básica.

##### Artículo 3.-

Para cumplir el objetivo del Artículo 2º. de la presente ley, son funciones de COFOPRI:

- a) Formular, aprobar y ejecutar un Programa de Formalización de la Propiedad de ámbito nacional que prevea su implementación progresiva, comprendiendo las acciones de identificación y calificación de asentamientos humanos; adjudicación de predios del Estado; promoción y saneamiento físico-legal de los predios; regularización de la habilitación urbana; regularización del tracto sucesivo; titulación; y, promoción del acceso al registro de la propiedad predial en asentamientos humanos, urbanizaciones populares y otros centros poblados que determine COFOPRI, asumiendo las competencias respectivas;
- b) Crear y poner en funcionamiento los mecanismos para promover que las transacciones sobre las propiedades formalizadas se mantengan dentro de la formalidad, cuidando que los costos de esta sean inferiores a los de la informalidad.
- c) Proponer al Presidente de la Republica los dispositivos legales complementarios, su reglamentación y las demás disposiciones que fueran necesarias para el cumplimiento del objetivo principal del Programa de Formalización de la Propiedad a que se refiere el Artículo 2º. de la presente ley;
- d) Asumir, de manera exclusiva y excluyente, las competencias correspondientes a la formalización hasta el otorgamiento de los títulos de propiedad. No esta incluida en esta función el registro de los títulos emitidos por COFOPRI, que estará a cargo del Registro Predial Urbano. Para ejercer sus competencias, COFOPRI dictara, mediante acuerdo de sus miembros, directivas que serán de obligatorio cumplimiento para todas las entidades del Estado vinculadas al proceso de formalización de la propiedad, desde que sean notificadas. Las directivas podrán ser publicadas si así lo determina dicha entidad; podrán ser publicadas si así lo determina dicha entidad;
- e) Proponer la creación de las condiciones institucionales necesarias para el desarrollo de la inversión privada y publica en la prestación de servicios complementarios relacionados con la propiedad, que incluyan la infraestructura de servicios públicos, el crédito y otros;
- f) Aprobar su presupuesto y administrar los recursos financieros provenientes del Tesoro Publico y del Fondo a

que se refieren los Artículos 6.º y 7.º de la presente ley, que se requieran para la ejecución del Programa de Formalización de la Propiedad. COFOPRI podrá encargar la administración, fiscalización y auditoría de dichos recursos a organismos multilaterales o instituciones privadas especializadas, mediante Resolución Suprema.

- g) Celebrar todo tipo de convenios, contratos y acuerdos con instituciones nacionales, extranjeras e internacionales; y,
- h) Las demás que le asigne la presente ley.

#### Artículo 4.-

Para la ejecución de las actividades que integren el Programa de Formalización de la Propiedad y la elaboración de propuestas y estudios relacionados con sus competencias COFOPRI podrá contratar a instituciones privadas.

#### Artículo 5.-

COFOPRI contará con una Gerencia General cuyas principales funciones serán:

- a) Ejecutar los acuerdos de COFOPRI y reportar su cumplimiento directamente a ella;
- b) Supervisar, dirigir y coordinar las actividades de COFOPRI y las instituciones privadas especializadas contratadas;
- c) Representar a COFOPRI; y,
- d) Las demás que le asigne COFOPRI y el Reglamento de la presente.

El Gerente General será designado mediante Resolución Suprema, a propuesta del Ministro que preside COFOPRI.

#### Artículo 6.-

Son recursos de COFOPRI los siguientes:

- a) Los que le otorgue la Ley Anual de Presupuesto y sus modificatorias; y,
- b) Otros recursos asignados de otras fuentes y fondos.

#### Artículo 7.-

Crease el Fondo de Promoción del Acceso a la Propiedad Formal (FOPROP), cuyos recursos serán destinados a financiar las actividades a que se refiere esta ley. La dirección del FOPROP corresponde a COFOPRI. Son recursos del FOPROP:

- a) Las donaciones y legados en efectivo y en especie otorgadas por personas naturales y jurídicas, los créditos internos y externos de fuentes bilaterales o multilaterales y los provenientes de la cooperación técnica internacional, que se obtengan para el cumplimiento de esta ley;
- b) Los ingresos propios que generen la administración de los recursos del FOPROP, incluyendo intereses, y los generados por la información y servicios que brinde; y,
- c) Otros recursos que se le asigne provenientes de otras fuentes y fondos.

#### Artículo 8.-

El personal de COFOPRI está comprendido en el régimen laboral de la actividad privada.

## TITULO II

### DE LA REORGANIZACION ADMINISTRATIVA Y LOS PROCESOS PARA LA FORMALIZACION DE LA PROPIEDAD

#### Artículo 9.-

Las dependencias e instancias de las municipalidades provinciales, las entidades del Ministerio de Transportes, Comunicaciones, Vivienda y Construcción, la Superintendencia de Bienes Nacionales, la Empresa Nacional de Edificaciones (ENACE) y las demás entidades públicas que hubiesen estado dotadas de competencias vinculadas con el proceso de formalización y/o cuente con información o documentación relacionada con dicho proceso, ajustarán sus actividades a esta ley y a las directivas que dice COFOPRI, transfiriéndole a su requerimiento todo el acervo documentario del que dispongan y colaborando con las acciones que ella ejecute, bajo responsabilidad del titular del pliego. Artículo 10.-

El Registro Predial de ámbito urbano, a que se refieren los Decretos Legislativos Nos. 495 y 496, en adelante el

Registro Predial Urbano, es una institución pública descentralizada, con autonomía registral, técnica, administrativa, económica y financiera, constituye un pliego presupuestal, y goza de todas las garantías establecidas por el Artículo 3º. de la Ley N.º. 26366, es decir:

- a) La autonomía de sus funcionarios en el ejercicio de sus funciones registrales;
- b) La intangibilidad del contenido de los asientos registrales, salvo título posterior, sentencia judicial o laudo arbitral firme;
- c) La seguridad jurídica de los derechos de quienes se amparan en la fe del Registro; y
- d) La indemnización por los errores registrales, sin perjuicio de las demás responsabilidades que correspondan conforme a ley.

El Registro Predial Urbano dependerá sectorialmente del Ministerio cuyo titular presida la COFOPRI. Este Ministerio asume las competencias sectoriales que sobre dicho Registro ejercía la Superintendencia Nacional de los Registros Públicos (SUNARP).

El Registro Predial de Lima se integra al Registro Predial Urbano y mantiene, por excepción, sus competencias sobre el ámbito rural del departamento de Lima.

Los Registros Prediales Rurales Regionales, a que se refiere el Decreto Legislativo N.º. 667, deberán instalarse en el resto del país específica y exclusivamente para el ámbito rural, conforme a su propia normatividad.

El Registro Predial Urbano se rige por los Decretos Legislativos Nos. 495 y 496, sus reglamentos y directivas, en todo aquello que no sea modificado por la presente ley y sus reglamentos.

El Registro Predial Urbano se encuentra facultado para emitir sus directivas registrales, fijar las tasas y derechos por los servicios e información que suministre a terceros y nombrar, sancionar y remover a sus registradores, a los Registradores Especiales a que se refiere el artículo siguiente y a sus demás trabajadores. El personal del Registro Predial Urbano está comprendido en el régimen laboral de la actividad privada.

El Ministro a cuyo sector pertenece el Registro Predial Urbano nombrará, sancionará y removerá a la máxima autoridad de dicho Registro y aprobará un nuevo Estatuto que sustituya su estructura orgánica y funcional aprobada por el Decreto Legislativo N.º. 496 y la Resolución N.º. 078 95 SUNARP;

#### Artículo 11.-

Para el cumplimiento de los objetivos de la presente ley, los Registradores Especiales designados por el Registro Predial Urbano, tendrán acceso a la información registral del Registro de la Propiedad Inmueble, del Registro de Personas Jurídicas y de todo otro registro del Sistema Nacional de los Registros Públicos que cuenten con información registral necesaria para la formalización de la propiedad.

Los Registradores Especiales solicitarán al registrador público encargado el bloqueo, traslado y cancelación de las partidas registrales con sus respectivas copias, así como los certificados de vigencia de poderes que requieran. Vencido el plazo de cinco días a que se refiere la octava disposición complementaria de la Ley N.º. 26366 modificada por la Ley N.º. 26434, los Registradores Especiales ejecutarán directamente los actos mencionados.

Las contiendas de competencia relacionadas con el traslado de partidas registrales que pudieran generarse, serán resueltas en última instancia por la máxima autoridad del Registro Predial Urbano.

#### Artículo 12.-

Los titulares de predios ubicados en urbanizaciones populares y centros poblados incorporados al Programa de Formalización, que se encuentren poseyéndolos y cuenten con títulos de propiedad que no puedan ser inscritos por presentar deficiencias en la continuidad de las transmisiones de dominio que preceden a su derecho, podrán solicitar a COFOPRI, directamente o a través de los representantes de las organizaciones que integran, la regularización de la inscripción de su derecho de propiedad.

De ser resuelta favorablemente la solicitud, COFOPRI expedirá la resolución que los declare propietarios y comunicará al Registro Predial Urbano para que proceda a cancelar las inscripciones existentes respecto del predio y a inscribir su derecho de propiedad en la forma, plazos y mediante los medios de publicidad que tutelen los derechos de terceros, que se establezcan en el reglamento.

El mismo derecho corresponde a quienes, al amparo de lo establecido por el Artículo 950.º del Código Civil, hayan adquirido predios en urbanizaciones populares y centros poblados incorporados al Programa de Formalización.

#### Artículo 13.-

Con el fin de dar cumplimiento a lo previsto en la presente ley y por razones operativas, COFOPRI asume la titularidad de los terrenos estatales, fiscales y municipales ocupados por asentamientos humanos en proceso de saneamiento físico-legal, para lo cual se inscribirá automáticamente dicha titularidad en el Registro respectivo.

COFOPRI no adjudicará más de una propiedad a un mismo titular dentro del ámbito de una misma provincia.

#### Artículo 14.-

Los contratos de transferencia de propiedad emitidos por la Corporación Nacional de la Vivienda, la Junta Nacional de la Vivienda, la Oficina Nacional de Pueblos Jóvenes, SINAMOS o ENACE serán inscritos en el Registro Predial Urbano por el simple mérito de su presentación por el titular con su respectiva declaración jurada, la que quedará sujeta a las verificaciones previstas en la Ley N.º 25035, de Simplificación Administrativa.

Asimismo, de existir adeudos pendientes ante entidades crediticias, bancarias o financieras en liquidación (como el Banco Central Hipotecario, el Banco de la Vivienda y las Mutuales), presentarán el recibo de cancelación y la correspondiente declaración jurada.

#### Artículo 15.-

Los programas de vivienda ejecutados por el Estado que a la fecha de vigencia de la presente ley, no hubiesen culminado su proceso de formalización, incluyendo el registro de la titulación individual, serán regularizados por COFOPRI trasladando las partidas matrices al Registro Predial Urbano, en la forma y plazos que se establezca mediante directiva de COFOPRI.

#### Artículo 16.-

COFOPRI constituye la última instancia administrativa para resolver, de manera directa o mediante delegación, las peticiones y reclamos de carácter particular presentados por los interesados durante la ejecución del Programa de Formalización de la Propiedad, respecto de:

- a) Los asuntos de su competencia establecidos en el Artículo 3.º y otras normas de la presente Ley;
- b) La representación legal de las organizaciones para los fines de la formalización de la propiedad de sus integrantes;
- c) Los problemas de colindancia entre predios correspondientes a dos o más organizaciones y entre predios de los individuos que las integran;
- d) La determinación del titular del derecho a la adjudicación de la propiedad individual;
- e) La determinación del titular del derecho de propiedad en los procedimientos a que se refiere el Artículo 12.º de la presente ley; y,
- f) Otros asuntos que establezcan el reglamento.

Las resoluciones que sobre las materias señaladas dicta COFOPRI, o sobre aspectos registrales del Registro Predial Urbano, agotan la vía administrativa, causan estado y podrán ser impugnadas por los interesados exclusivamente ante el Sistema Arbitral Especial de la Propiedad a que se refiere el Artículo 17.º de la presente ley, para la resolución definitiva del derecho que corresponda.

La impugnación ante el Sistema Arbitral de la Propiedad deberá interponerse en el plazo de cinco (5) días hábiles posteriores a su notificación o publicación y COFOPRI o el Registro Predial Urbano, según corresponda la remitirá al Sistema Arbitral. La impugnación interpuesta suspende la ejecución de la resolución emitida por COFOPRI.

El reglamento fijará los procedimientos, requisitos instancias y plazos respectivos.

#### Artículo 17.-

Establézcase un Sistema Arbitral Especial de la Propiedad para la solución de los conflictos, las controversias, declaraciones, determinación de mejor derecho, incertidumbre jurídicas o de hecho, jurídica o factualmente trascendentes, que se produzcan en los asentamientos humanos, urbanizaciones populares y centros poblados que sean incorporados al Programa de Formalización de la Propiedad, para lo cual el Sistema tendrá competencia territorial sobre dichas áreas. Esta incorporación genera, de pleno derecho, la aceptación previa, automática y expresa de un convenio arbitral por parte de los integrantes de dichas poblaciones, así como su sometimiento a la jurisdicción arbitral creada por esta ley. No se admitirá renuncia, reserva o pacto en contrario, entendiéndose que para ello dicho acto se halla dentro del supuesto normativo de la Primera Disposición Complementaria y Transitoria de la Ley General de Arbitraje N.º 26572.

El Sistema Arbitral también tendrá competencia territorial en las áreas rurales del departamento de Lima que sean incorporadas al Programa de Formalización de la Propiedad.

El Sistema Arbitral Especial de la Propiedad tendrá facultad exclusiva y excluyente de toda otra Jurisdicción para resolver, de oficio o a petición de parte, las siguientes materias:

- a) La definición de su propia competencia.



- b) Las impugnaciones que presenten los interesados contra las resoluciones de carácter particular que emita COFOPRI de manera directa o delegada y causen estado; y
- c) Las demás que se establezcan en el Reglamento.

Los jueces se abstendrán, de oficio o a petición de parte, de conocer las materias que se sometan a su conocimiento cuando corresponda al Sistema Arbitral Especial de la Propiedad, debiendo declarar la nulidad de todo lo actuado y el archivamiento definitivo del proceso en el estado en que se encuentre, bajo responsabilidad civil, administrativa y penal.

Los aludos expedidos por el Sistema Arbitral Especial de la Propiedad son definitivos, tienen la calidad de cosa juzgada material y contra ellos no procede acción, pretensión, recurso o impugnación ordinaria o extraordinaria alguna ante el Poder Judicial, que deberá declarar inadmisibles, bajo responsabilidad civil, administrativa y penal, cualquier petición que pretenda contravenir esta disposición.

El Órgano de Gobierno del Poder Judicial designará en cada Distrito Judicial, Juzgados Civiles de Primera Instancia para el conocimiento del trámite de ejecución de los laudos expedidos por el Sistema Arbitral Especial de la Propiedad. Estos Juzgados Civiles ejecutarán los laudos dentro del tercer día de remitidos por el Sistema Arbitral dentro del tercer día de remitidos por el Sistema Arbitral Especial de la Propiedad, con citación de los interesados y de los terceros legitimados apersonados al procedimiento arbitral. COFOPRI, el Registro Predial Urbano, cualquier otra dependencia estatal, así como las personas naturales y jurídicas cumplirán lo dispuesto en el laudo. Contra la orden de ejecución del laudo no procede recurso o articulación alguna que impida o pretenda retrasar dicha ejecución, bajo responsabilidad civil, administrativa, funcional y penal del Juez respectivo. Cualquier apelación que fuese concedida se entenderá otorgada sin efecto suspensivo, siendo nula de pleno derecho cualquier disposición o estipulación en contrario, bajo responsabilidad.

Un reglamento especial establecerá la dirección y administración del sistema, el número y las condiciones de los árbitros, el procedimiento, los plazos y las demás características del Sistema Arbitral Especial de la Propiedad.

En todo lo no previsto en la presente ley y su reglamento, rige supletoriamente lo establecido en la Ley General de Arbitraje y el TUO del Código Procesal Civil para el Proceso de Ejecución, con excepción de lo dispuesto en sus Artículos 700. y 702.

#### Artículo 18.-

Las reclamaciones planteadas con posterioridad a la inscripción definitiva de un predio en el Registro Predial Urbano, dirigidas a enervar el título en virtud del cual se extendió la primera inscripción individual de propiedad de un predio cuya matriz se encuentra inscrita en dicho Registro, podrán ser interpuestas ante el órgano jurisdiccional respectivo conforme a los procedimientos vigentes, siempre que la reclamación no haya sido resuelta, consentida o ejecutoriada previamente en la vía administrativa de manera directa o delegada, por COFOPRI o el Registro Predial Urbano, o en la jurisdicción del Sistema Arbitral Especial de la Propiedad.

Las reclamaciones se dirigirán contra el titular con derecho inscrito y, si fueran declaradas fundadas, darán únicamente derecho a que se ordene el pago de una indemnización de carácter pecuniario por daños y perjuicios en favor del demandante. En tales casos el titular con derecho inscrito mantendrá la validez legal de su título e inscripción, los que serán incontestables mediante acción, pretensión o procedimiento alguno, y quedará obligado al pago de la indemnización aludida.

Las acciones a que se refiere el presente artículo caducarán en el plazo establecido en el inciso 4) del Artículo 2001. del Código Civil.

### TITULO III

#### DE LA ADJUDICACION DE TIERRAS DEL ESTADO CON FINES DE VIVIENDA

#### Artículo 19.-

Declarase de interés nacional el establecimiento de un proceso único y simplificado para el acceso a la propiedad predial de terrenos del Estado para los sectores de menores recursos, que garantice que:

- a) La población de menores recursos pueda acceder a la propiedad de terrenos con fines de vivienda, sin necesidad de recurrir a invasiones de tierras estatales o privadas;
- b) El Estado cuente con la información sobre las tierras de su propiedad que pueden ser adjudicadas a la población para satisfacer sus necesidades de vivienda, y
- c) El Estado pueda responder a la demanda de terrenos para fines de vivienda de manera ordenada, sobre la base de una administración de las tierras estatales disponibles para dicho fin, que permita la ejecución de programas de adjudicación.

#### Artículo 20.-

Aquellos terrenos de propiedad estatal que hubieran sido invadidos o ocupados ilegalmente con posterioridad al 31 de octubre de 1993 y sus ocupantes, se adeudaran a lo dispuesto en el presente Título III, siguiendo el procedimiento de adjudicación de tierras establecido por los Artículos 19.º al 27.º de la presente Ley.

La posesión inmediata, directa y física de un terreno del Estado por invasión u otro medio de ocupación ilegal, con posterioridad al 31 de octubre de 1993, no genera derecho expectatio alguno.

COFOPRI no adjudicara los terrenos ocupados ilegalmente a sus propios poseedores. Dichos poseedores deberán inscribirse en el Padrón a que se refiere el Artículo 27.º de la presente ley, a efectos de que sean considerados en alguno de sus programas de adjudicación.

#### Artículo 21.-

La formalización y adjudicación de la propiedad en terrenos del Estado para fines urbanos se ceñirá a lo dispuesto en la presente ley y sus reglamentos, los que se ajustaran a los principios de la Ley N.º 25035, de Simplificación Administrativa.

#### Artículo 22.-

Las municipalidades provinciales definirán las áreas de expansión urbana dentro de su jurisdicción, precisando e informando a COFOPRI lo siguiente:

- a) Los límites y las áreas correspondientes a la expansión urbana;
- b) Las áreas reservadas de equipamiento social (para educación, salud y recreación);
- c) La proyección de los esquemas viales primarios y secundarios con el fin de realizar las reservas de áreas respectivas; y,
- d) Los terrenos no aptos para fines de vivienda por constituir zonas riesgosas; carentes de las condiciones de higiene y salubridad; zonas con valor histórico; zonas de explotación minera; y, zonas reservadas para la defensa nacional, determinados en coordinación con las entidades públicas encargadas.

El reglamento establecerá la forma, los plazos, el mecanismo y las condiciones mediante los cuales COFOPRI asegurara la ejecución de lo dispuesto en el presente artículo.

#### Artículo 23.-

No podrán ser objeto de adjudicación para fines de vivienda, las áreas a que se refieren los incisos b), c) y d) del Artículo 22.º de la presente ley, ni los de propiedad privada.

#### Artículo 24.-

El Registro Predial Urbano inscribirá automáticamente a nombre del Estado las áreas reservadas a que se refieren los incisos b) y c) del Artículo 22.º de la presente ley, a fin de proteger el crecimiento ordenado de la ciudad.

#### Artículo 25.-

COFOPRI elaborara el Inventario de Tierras para fines de Vivienda, sobre la base de la información proporcionada por las municipalidades provinciales, la que incluirá las tierras estatales disponibles y los elementos que faciliten establecer el precio de los terrenos que serán materia de adjudicación.

#### Artículo 26.-

COFOPRI aprobara el Plano Perimétrico de Trazado y Lotización de los terrenos objeto de adjudicación, el mismo que será inscrito en el Registro Predial Urbano a nombre de COFORPI.

#### Artículo 27.-

COFOPRI llevara un Padrón de Solicitantes de Terrenos para Vivienda, en el que se inscribirán los interesados que no cuenten con otra propiedad predial urbana en la provincia.

La prioridad para la adjudicación de los terrenos solicitados se regulara teniendo como base el orden de inscripción en el Padrón.

### TITULO IV

#### DISPOSICIONES COMPLEMENTARIAS,

## TRANSITORIAS Y FINALES

### Artículo 28.-

El Programa de Formalización de la Propiedad, que incluye el Sistema Arbitral Especial a que se refiere el Artículo 17. de la presente ley, se pondrá en funcionamiento progresivamente en todo el país, de acuerdo a un cronograma que establecerá COFOPRI mediante directiva.

Los procedimientos en trámite en las zonas en que COFOPRI asuma competencia, serán resueltos por dicha entidad de acuerdo a las disposiciones establecidas en sus reglamentos y directivas.

### Artículo 29.-

En tanto no se emitan las directivas a que se refiere el artículo anterior, las entidades públicas que a la fecha de vigencia de la presente ley se encontraban dotadas de competencias relacionadas con la formalización de la propiedad, continuarán ejerciéndolas hasta que sean notificadas por COFOPRI. En tanto no se apruebe su Estatuto, el Registro Predial de Lima culminará su proceso de reorganización, cubriendo las plazas vacantes.

Todas las entidades mencionadas aplicarán a los procedimientos en trámite lo dispuesto en los Decretos Legislativos Nos. 495 y 496 y los Decretos Supremos N.º 001-90-VC y 002 90 VC.

### Artículo 30.-

Las municipalidades provinciales aplicarán el Reglamento de Habilitación Urbana para Urbanizaciones Populares aprobado por el Decreto Supremo N.º 001 90 VC.

Las urbanizaciones populares que cuenten con construcciones consolidadas, quedarán automáticamente incorporadas al área de expansión urbana de la municipalidad provincial correspondiente y, en tanto las referidas municipalidades no le asignen bonificación, tendrán una zonificación residencial de densidad media.

### Artículo 31.-

Modifícase el inciso d) del Artículo 2.º del Decreto Legislativo N.º 495, el mismo que queda redactado de la siguiente manera: “Se entiende por Urbanizaciones Populares, aquellas de las que son titulares las Cooperativas de Vivienda, Asociaciones Pro Vivienda, Asociaciones de Vivienda, Juntas de Propietarios, Juntas de Compradores y cualquier otra forma asociativa con fines de vivienda.”

### Artículo 32.-

Las prendas agrícolas que constituyan los propietarios o poseedores de predios rurales inscritos en el Registro Predial de Lima, se registrarán exclusivamente en las partidas registrales de dichos predios. El Reglamento establecerá los requisitos y procedimientos para la inscripción y puestas en funcionamiento de lo dispuesto en este artículo.

### Artículo 33.-

Modifícase el Artículo 17.º de la Ley N.º 26366 el mismo que quedará redactado de la siguiente manera: "El Directorio es el órgano de la Superintendencia encargado de aprobar las políticas de su administración. Está integrado por el Superintendente Nacional de los Registros Públicos, quien lo preside, por un representante de la Presidencia del Consejo de Ministros, un representante del Ministerio de Economía y Finanzas y por un representante del Ministerio que preside COFOPRI, quien solo tendrá derecho a voz.

### Artículo 34.-

A efectos de la implementación del Programa de Formalización de la Propiedad a que se refiere el presente ley, exonerase a COFOPRI y al Registro Predial Urbano de la aplicación de las normas sobre proceso presupuestario, austeridad, remuneraciones y mecanismos de contratación o contrata, establecidos en la Ley Marco del Presupuesto del Sector Público y en la Ley Anual de Presupuesto vigente y sus modificatorias.

Considérese a COFOPRI y al Registro Predial Urbano como entidades en proceso de implementación por un período de tres años, contados desde la vigencia de la presente ley. Sus presupuestos y procesos presupuestarios, normas de austeridad y remuneraciones son determinados mediante directiva de cada una de estas entidades, tomando en cuenta criterios similares a los establecidos por la Oficina de Instituciones y Organismos del Estado del Ministerio de Economía y Finanzas.

La contratación de los bienes y servicios requeridos por COFORPI y el Registro Predial Urbano para el desarrollo del Programa de Formalización de la Propiedad se realizará a través de concursos o adjudicación directa, mediante procedimientos, excepciones y montos cuyas características se establecerán en los reglamentos que aprueben dichas entidades mediante directivas. Los reglamentos deberán prever procedimientos que garanticen que la

elección de los proveedores, contratistas y consultores sea el resultado de un proceso de selección entre varios candidatos o que las condiciones de calidad del servicio y de costo ofrecidas estén entre las más competitivas del mercado o que la experiencia en el desarrollo de las actividades relacionadas con el Programa de Formalización en el país ofrezca ventajas significativas para la realización de las actividades contratadas.

El FOPROP será administrado directamente por COFORPI, según los procedimientos y pautas que establezca mediante directiva y en concordancia con las disposiciones de las fuentes proveedoras de sus recursos, quedando exonerado de las normas de la Ley Anual de Presupuesto vigente y sus modificatorias.

El Registro Predial Urbano administrará directamente sus recursos propios, los que le sean asignados y los provenientes de donaciones, legados, créditos internos y externos de fuentes bilaterales o multilaterales o de la cooperación técnica internacional, que se obtengan para el cumplimiento de los fines de esta ley.

Asimismo, autorizase al Gerente General de COFOPRI y a la máxima autoridad del Registro Predial Urbano para que gestionen los recursos necesarios ante las autoridades pertinentes.

#### Artículo 35.-

Exonerase del Impuesto de Alcabala a la primera transferencia de dominio realizada por el Estado en favor de urbanizaciones populares, en los procesos de regularización de su propiedad seguidos durante la ejecución del Programa de Formalización de la Propiedad.

#### Artículo 36.-

Las transferencias, información, documentación y cualquier otra acción dispuesta por COFOPRI o el Registro Predial Urbano para la ejecución del Programa de Formalización de la Propiedad estarán exoneradas del pago de cualquier tasa, arancel, derecho registral o municipal u otro cobro por los servicios requeridos.

#### Artículo 37.-

La presente ley será reglamentada mediante Decretos Supremos, con excepción de aquellos reglamentos que deban ser aprobados mediante directivas de COFOPRI o del Registro Predial Urbano, conforme a lo dispuesto en esta ley.

#### Artículo 38.-

Deroganse el penúltimo párrafo del Artículo 2., el inciso b) del Artículo 14., el segundo párrafo del Artículo 15., el segundo párrafo del Artículo 19. y la primera, la séptima y la novena disposición complementaria de la Ley N. 26366. Asimismo, deroguese, modifíquese o déjese sin efecto las demás normas que se opongan a la presente ley.

#### Artículo 39.-

La presente ley entrará en vigencia al día siguiente de su publicación en el Diario Oficial El Peruano.



## National Housing Rights Legislation



**Suriname**  
Constitution (1987)

### Article 49

A housing plan shall be determined by law, aimed at the procurement of a sufficient number of affordable houses and state control of the use of real estate for public housing.



## National Housing Rights Legislation



**Uruguay**  
Constitution (1918)

### Article 45

Every inhabitant of the Republic has the right to decent housing. The law shall seek to ensure hygienic and economical housing by facilitating the purchase thereof and stimulating the investment of private capital to this end.



## National Housing Rights Legislation



### Uruguay

Act No. 14219 (1974)

[Sec. 3 of Act No. 14219 of 1974 creates an emergency housing register. Anyone entered on the register is automatically exempt from eviction pending an adjudication of the housing by the Mortgage Bank of Uruguay. This provision protects tenants, subtenants and poor occupants with contracts dating from before 1974, and is a guarantee of enormous benefit to low-income sectors of the population.] [↗](#)



## National Housing Rights Legislation



### Uruguay

Act No. 14384 (1978)

[Act No. 14384 of 1978 provides that all rural producers are entitled to a minimum investment in their land they occupy and, to working conditions which allow them to develop their holdings economically, whilst making a reasonable profit.] [\(52\)](#)





## National Housing Rights Legislation



### Venezuela Constitution (1999)

#### Artículo 23

Los tratados, pactos y convenciones relativos a derechos humanos, suscritos y ratificados por Venezuela, tienen jerarquía constitucional y prevalecen en el orden interno, en la medida en que contengan normas sobre su goce y ejercicio más favorables a las establecidas por esta Constitución y la ley de la República, y son de aplicación inmediata y directa por los tribunales y demás órganos del Poder Público.

[Establishing that international human rights treaties are incorporated into, and indeed trump, domestic law.]

#### Article 82

Everyone has a right to adequate housing, which is secure, comfortable, hygienic, with basic essential services that include an environment which humanizes family relations, neighborhoods and communities. The progressive realization of this right is an obligation which is divided between citizens and the State in all respects.

The State shall give priority to families and shall guarantee the existence of measures and access to social policies for credit and for the construction, acquisition or improvement of housing, especially to families with limited resources.



## National Housing Rights Legislation



### **Bermuda**

#### Parish Assistance Act (1968)

[Social assistance is available to any individual who does not have enough income to cover basic needs (which have been defined as food, shelter, clothing, fuel, utilities, household supplies and personal requirements; funerals and burials; and health care services.) [149](#)]



## National Housing Rights Legislation



### Canada

#### Canada Mortgage and Housing Corporation Act

##### Article 17.

Subject to section 33 of this Act and to subsection 75(2) and section 100 of the National Housing Act, the Corporation shall, on behalf of Her Majesty, and in the place of the Minister, have, exercise and perform all rights, powers, duties, liabilities and functions of the Minister under the Housing Acts or under any contract entered into under those Acts, except the authority of the Minister under those Acts to pay moneys out of the Consolidated Revenue Fund.

##### Article 18.

Wherever in any contract, agreement, guarantee or mortgage made or entered into under The Dominion Housing Act, 1935, The Home Improvement Loans Guarantee Act, 1937, The National Housing Act, 1938, or under The National Housing Act, 1944 prior to January 1, 1946, it is provided that any right, power, duty, liability or function is vested in or to be exercised or performed by the Minister of Finance or by any officer of the Department of Finance or by any person acting on behalf of the Minister of Finance, that right, power, duty, liability or functions shall be vested in and exercise or performed by the Corporation.



## National Housing Rights Legislation



### Canada Canadian Human Rights Act

#### Sec. 5.

It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public

- (a) To deny, or to deny access to, any such goods, service, facility or accommodation to any individual, or
- (b) To differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

#### Sec. 6.

It is a discriminatory practice in the provision of commercial premises or residential accommodation:

- (a) To deny occupancy of such premises or accommodation to any individual, or
- (b) To differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

#### Sec 13.

(1) It is a discriminatory practice:

- (a) In the provision of goods, services, facilities or accommodation customarily available to the general public,
- (b) In the provision of commercial premises or residential accommodation, or
- (c) In matters related to employment,

To harass an individual on a prohibited ground of discrimination.

#### Sec 15.

- (1) It is not a discriminatory practice for a person to adopt or carry out a special program, plan or arrangement designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be or are based on or related to the race, national or ethnic origin, colour, religion, age, sex, marital status, or disability of members of that group, by improving opportunities respecting goods, services facilities, accommodation or employment in relation to that group.



## National Housing Rights Legislation



### Canada

Human Rights Code (1981)

Statutes of Ontario (1981, chap. 53), as amended in 1984, Chapter 58, s. 39 and 1986, Chapter 64, s. 18

#### Section 2.

- (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status, handicap or the receipt of public assistance.
- (2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, marital status, same-sex partnership status, family status, handicap or the receipt of public assistance.

#### Section 3a

- (1) Every sixteen or seventeen year old person who has withdrawn from parental control has a right to equal treatment with respect to occupancy of and contracting for accommodation without discrimination because the person is less than eighteen years old.

#### Section 6.

- (1) Every person who occupies accommodation has a right to freedom from harassment because of sex by the landlord or agent of the landlord or by an occupant of the same building.



## National Housing Rights Legislation



### Canada Housing Development Act

#### Article 4.

The Minister may:

- (a) make grants in aid of studies into housing conditions or any matter relating to housing in Ontario; and
- (b) make grants and otherwise assist the housing building industry in Ontario by stimulating and encouraging research, education and constructive competition within the industry.

#### Article 7.

- (1) The Crown in right of Ontario represented by the Minister may make agreements with the Crown in right of Canada represented by the Minister of Government Services or such other Minister as may be authorized in that behalf respecting joint projects as contemplated in section 40 of the National Housing Act (Canada) for:
  - (a) the acquisition and development of land for housing purposes;
  - (b) the construction of housing projects for sale or for rent; and
  - (c) the acquisition, improvement and conversion for housing purposes of existing buildings situated in any municipality.
- (2) The Lieutenant Governor in Council may constitute corporations with such powers and duties as are considered expedient to carry out any of the terms of any agreement made under subsection (1), or to carry out any building development or housing project, including power to plan, construct and manage any building development or any housing project undertaken under such agreement or otherwise, and including power to acquire and dispose of land in their own name.
- (3) Any money required to be furnished by the Crown in right of Ontario under any agreement made under subsection (1) shall be paid out of the money appropriated therefor by the Legislature.
- (4) Any money required by the Crown in right of Ontario for the purposes of any corporation constituted under subsection (2) for purposes other than to carry out the terms of an agreement made under subsection (1) shall be paid out of the money appropriated therefor by the Legislature.
- (5) Despite any other Act, the council of a municipality that enters into or has heretofore entered into an agreement with Her Majesty the Queen in right of Ontario, or with Her Majesty the Queen in right of Ontario and Central Mortgage and Housing Corporation, a corporation established by The Central Mortgage and Housing Corporation Act (Canada) pursuant to The Housing Development Act, 1948 or this Act or predecessor of this Act shall be deemed to have and to have had authority to enter into such agreement and shall have all such powers as may be necessary to carry out the provisions thereof or of any undertaking given by such council pursuant thereto, and, without limiting the generality of the foregoing, such council may incur continuing obligations and make provisions for the discharge thereof and may contribute money to and expend money on joint housing projects and raise money therefor by the issue of debentures, all without the assent of the electors and without reference to the Ontario Municipal Board, and such council may apportion any debt or obligation arising out of such agreement in such manner as it considers equitable against any properties, whether such properties form part of a project within the meaning of such agreement or are adjacent thereto, and such debt or obligation when so apportioned shall be deemed to be a land tax within the meaning of the Municipal Act and recoverable as such.

#### Article 16.

In sections 17 and 18, “housing project” means a project designed to provide housing accommodation or to facilitate in any way the provision of housing accommodation, with or without any public space recreational facilities and commercial space or buildings appropriate thereto.

#### Article 17.

If there is an official plan in effect in a municipality that includes provisions relating to the provision of housing, which provisions have been approved by the Minister subsequent to the coming into force of this section, or if the council of a municipality has adopted a policy statement containing provisions relating to the provision of housing

which statement has been approved by the Minister, the council of the municipality may:

- (a) acquire and hold land, with or without buildings thereon, within the municipality for the purpose of a housing project;
- (b) survey, clear, grade, subdivide, service and otherwise prepare such land for the purpose of the project; and
- (c) sell, lease or otherwise dispose of such land for a nominal or other consideration for housing purposes.

**Article 19.**

To relieve any emergency in housing conditions, a municipality, with the approval of the Minister, may erect, maintain, manage and wind up projects for temporary housing accommodation either in or outside the municipality.



## National Housing Rights Legislation



### Canada

#### National Housing Act (Chapter N-11)

An Act to promote the construction of new houses, the repair and modernization of existing houses, and the improvement of housing and living conditions.

#### Article 73.

It is the responsibility of the Corporation to cause investigations to be made into housing conditions and the adequacy of existing housing accommodation in Canada or in any part of Canada and to cause steps to be taken for the distribution of information leading to the construction or provision of more adequate and improved housing accommodation and the understanding and adoption of community plans in Canada.





## National Housing Rights Legislation



**Canada**

Ontario Housing Corporation Act

### Article 6.

- (1) The Corporation, with the approval of the Lieutenant Governor in Council, may make any loan, grant, guarantee or advance that may be made by the Lieutenant Governor in Council or the Minister under sections 2 and 4 of the Housing Development Act.

No information on relevant legislative clauses is available from this country.

Should you have such information we would appreciate if you could forward this to [Housing.Policy@unhabitat.org](mailto:Housing.Policy@unhabitat.org)

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## National Housing Rights Legislation



### **United States of America** Banks and Banking Act (1967) <sup>(20)</sup>

#### Section 1701t.

The Congress affirms the national goal, as set forth in section 1441 of Title 42, of “a decent home and a suitable living environment for every American family”.

The Congress finds that this goal has not been fully realized for many of the Nation’s lower income families; that this is a matter of grave national concern; and that there exist in the public and private sectors of the economy the resources and capabilities necessary to the full realization of this goal.

The Congress declares that in the administration of those housing programs authorized by this Act which are designed to assist families with incomes so low that they could not otherwise decently house themselves, and of other Government programs designed to assist in the provision of housing for such families, the highest priority and emphasis should be given to meeting the housing needs of those families for which the national goal has not become a reality; and in the carrying out of such programs there should be the fullest practicable utilization of the resources and capabilities of private enterprise and of individual self-help techniques. <sup>(21)</sup>



## National Housing Rights Legislation



### United States of America Civil Rights Code (1866)

#### Section 1982. Property rights of citizens <sup>421</sup>

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.



## National Housing Rights Legislation



### United States of America Civil Rights Code (1949, as amended) <sup>(24)</sup>

#### Section 1441. Congressional declaration of national housing policy

The Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family, thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth, and security of the Nation. The Congress further declares that such production is necessary to enable the housing industry to make its full contribution toward an economy of maximum employment, production, and purchasing power. The policy to be followed in attaining the national housing objective established shall be:

- (1) private enterprise shall be encouraged to serve as large a part of the total need as it can;
- (2) governmental assistance shall be utilized where feasible to enable private enterprise to serve more of the total need;
- (3) appropriate local public bodies shall be encouraged and assisted to undertake positive programs of encouraging and assisting the development of well-planned, integrated residential neighborhoods, the development and redevelopment of communities, and the production, at lower costs, of housing of sound standards of design, construction, livability, and size for adequate family life;
- (4) governmental assistance to eliminate substandard and other inadequate housing through the clearance of slums and blighted areas, to facilitate community development and redevelopment, and to provide adequate housing for urban and rural nonfarm families with incomes so low that they are not being decently housed in new or existing housing shall be extended to those localities which estimate their own needs and demonstrate that these needs are not being met through reliance solely upon private enterprise, and without such aid; and
- (5) governmental assistance for decent, safe, and sanitary farm dwellings and related facilities shall be extended where the farm owner demonstrates that he lacks sufficient resources to provide such housing on his own account and is unable to secure necessary credit for such housing from other sources on terms and conditions which he could reasonably be expected to fulfill.

The Department of Housing and Urban Development, and any other departments or agencies of the Federal Government having powers, functions, or duties with respect to housing, shall exercise their powers, functions, and duties under this or any other law, consistently with the national housing policy declared by this Act and in such manner as will facilitate sustained progress in attaining the national housing objective hereby established, and in such manner as will encourage and assist:

- (1) the production of housing of sound standards of design, construction, livability, and size for adequate family life;
- (2) the reduction of the costs of housing without sacrifice of such sound standards;
- (3) the use of new designs, materials, techniques, and methods in residential construction, the use of standardized dimensions and methods of assembly of home-building materials and equipment, and the increase of efficiency in residential construction and maintenance;
- (4) the development of well-planned, integrated, residential neighborhoods and the development and redevelopment of communities; and
- (5) the stabilization of the housing industry at a high annual volume of residential construction. <sup>(25)</sup>



## National Housing Rights Legislation



### United States of America Civil Rights Code (1968, as amended) <sup>(26)</sup>

[Under the Fair Housing Act, it is illegal to discriminate against a person in the provision of housing because that person has HIV/AIDS, has a record of having HIV/AIDS, is perceived as having HIV/AIDS, is associated with persons with HIV/AIDS, or has a person with HIV/AIDS residing with them.]

#### Section 1441a. National housing goals

##### (a) Congressional findings and reaffirmation of goals

The Congress finds that the supply of the Nation's housing is not increasing rapidly enough to meet the national housing goal, established in the Housing Act of 1949 [42 U.S.C.A. s 1441 et seq.], of the "realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family". The Congress reaffirms this national housing goal and determines that it can be substantially achieved within the next decade by the construction or rehabilitation of twenty-six million housing units, six million of these for low and moderate income families.

##### (b) Additional Congressional findings

The Congress further finds that policies designed to contribute to the achievement of the national housing goal have not directed sufficient attention and resources to the preservation of existing housing and neighborhoods, that the deterioration and abandonment of housing for the Nation's lower income families has accelerated over the last decade, and that this acceleration has contributed to neighborhood disintegration and has partially negated the progress toward achieving the national housing goal which has been made primarily through new housing construction.

##### (c) Congressional declaration of purposes

The Congress declares that if the national housing goal is to be achieved, a greater effort must be made to encourage the preservation of existing housing and neighborhoods through such measures as housing preservation, moderate rehabilitation, and improvements in housing management and maintenance, in conjunction with the provision of adequate municipal services. Such an effort should concentrate, to a greater extent than it has in the past, on housing and neighborhoods where deterioration is evident but has not yet become acute. <sup>(27)</sup>

#### Section 3604. Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful —

- (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.
- (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.
- (c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.
- (d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
- (e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.
- (f)
  - (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of —

- (A) that buyer or renter,
  - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
  - (C) any person associated with that buyer or renter.
- (2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of —
- (A) that person; or
  - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
  - (C) any person associated with that person.
- (3) For purposes of this subsection, discrimination includes —
- (A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.
  - (B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or
  - (C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that —
    - (i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;
    - (ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
    - (iii) all premises within such dwellings contain the following features of adaptive design:
      - (I) an accessible route into and through the dwelling;
      - (II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
      - (III) reinforcements in bathroom walls to allow later installation of grab bars; and
      - (IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.
- (4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as “ANSI A117.1”) suffices to satisfy the requirements of paragraph (3)(C)(iii).
- (5)
- (A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.
  - (B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.
  - (C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).
  - (D) Nothing in this subchapter shall be construed to require the Secretary to review or approve the



plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

- (6)
  - (A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 3610(f)(3) of this title to receive and process complaints or otherwise engage in enforcement activities under this subchapter.
  - (B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this subchapter.
- (7) As used in this subsection, the term “covered multifamily dwellings” means —
  - (A) buildings consisting of 4 or more units if such buildings have one or more elevators; and
  - (B) ground floor units in other buildings consisting of 4 or more units.
- (8) Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this subchapter shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subchapter.
- (9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. [49](#)



## National Housing Rights Legislation



### United States of America Civil Rights Code (1974, as amended) <sup>(28)</sup>

#### Section 5301. Congressional findings and declaration of purpose

##### (c) Decent housing, suitable living environment, and economic opportunities for persons of low and moderate income; community development activities which may be supported by Federal assistance

The primary objective of this chapter and of the community development program of each grantee under this chapter is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective, not less than 70 percent of the aggregate of the Federal assistance provided to States and units of general local government under section 5306 of this title and, if applicable, the funds received as a result of a guarantee or a grant under section 5308 of this title, shall be used for the support of activities that benefit persons of low and moderate income, and the Federal assistance provided in this chapter is for the support of community development activities which are directed toward the following specific objectives —

- (1) the elimination of slums and blight and the prevention of blighting influences and the deterioration of property and neighborhood and community facilities of importance to the welfare of the community, principally persons of low and moderate income;
- (2) the elimination of conditions which are detrimental to health, safety, and public welfare, through code enforcement, demolition, interim rehabilitation assistance, and related activities;
- (3) the conservation and expansion of the Nation's housing stock in order to provide a decent home and a suitable living environment for all persons, but principally those of low and moderate income;
- (4) the expansion and improvement of the quantity and quality of community services, principally for persons of low and moderate income, which are essential for sound community development and for the development of viable urban communities;
- (5) a more rational utilization of land and other natural resources and the better arrangement of residential, commercial, industrial, recreational, and other needed activity centers;
- (6) the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods;
- (7) the restoration and preservation of properties of special value for historic, architectural, or aesthetic reasons;
- (8) the alleviation of physical and economic distress through the stimulation of private investment and community revitalization in areas with population outmigration or a stagnating or declining tax base; and
- (9) the conservation of the Nation's scarce energy resources, improvement of energy efficiency, and the provision of alternative and renewable energy sources of supply.

It is the intent of Congress that the Federal assistance made available under this chapter not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance. <sup>(29)</sup>



## National Housing Rights Legislation



### United States of America

Civil Rights Code (1987, as amended, "The McKinney Act") <sup>(43)</sup>

Section 11301. Findings and purpose:

#### (a) Findings

The Congress finds that —

- (1) the Nation faces an immediate and unprecedented crisis due to the lack of shelter for a growing number of individuals and families, including elderly persons, handicapped persons, families with children, Native Americans, and veterans;
- (2) the problem of homelessness has become more severe and, in the absence of more effective efforts, is expected to become dramatically worse, endangering the lives and safety of the homeless;
- (3) the causes of homelessness are many and complex, and homeless individuals have diverse needs;
- (4) there is no single, simple solution to the problem of homelessness because of the different subpopulations of the homeless, the different causes of and reasons for homelessness, and the different needs of homeless individuals;
- (5) due to the record increase in homelessness, States, units of local government, and private voluntary organizations have been unable to meet the basic human needs of all the homeless and, in the absence of greater Federal assistance, will be unable to protect the lives and safety of all the homeless in need of assistance; and
- (6) the Federal Government has a clear responsibility and an existing capacity to fulfill a more effective and responsible role to meet the basic human needs and to engender respect for the human dignity of the homeless.

#### (b) Purpose

It is the purpose of this chapter —

- (1) to establish an Interagency Council on the Homeless;
- (2) to use public resources and programs in a more coordinated manner to meet the critically urgent needs of the homeless of the Nation; and
- (3) to provide funds for programs to assist the homeless, with special emphasis on elderly persons, handicapped persons, families with children, Native Americans, and veterans. <sup>(44)</sup>



## National Housing Rights Legislation



### United States of America

Civil Rights Code (as amended 1990, "Americans with Disabilities Act") <sup>(36)</sup>

#### Section 12101. Findings and purpose

##### (a) Findings

The Congress finds that —

- (1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;
- (2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;
- (3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;
- (4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;
- (5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;
- (6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;
- (7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;
- (8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and
- (9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

##### (b) Purpose

It is the purpose of this chapter —

- (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
- (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;
- (3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and
- (4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities. <sup>(37)</sup>



## National Housing Rights Legislation



### Australia

#### Racial Discrimination Act (1975)

##### Section 12.

- (1) It is unlawful for a person, whether as a principal or agent:
  - (a) To refuse or fail to dispose of any estate or interest in land, or any residential or business accommodation, to a second person;
  - (b) To dispose of such an estate or interest or such accommodation to a second person on less favourable terms and conditions than those which are or would otherwise be offered;
  - (c) To treat a second person who is seeking to acquire or has acquired such an estate or interest or such accommodation less favourably than other persons in the same circumstances;
  - (d) To refuse to permit a second person to occupy any land or any residential or business accommodation; or
  - (e) To terminate any estate or interest in land of a second person or the right of a second person to occupy any land or any residential or business accommodation, by reason of the race, colour or national or ethnic origin of that second person or any relative or associate of that second person.
- (2) It is unlawful for a person, whether as a principal or agent, to impose or seek to impose on another person any term of condition that limits, by reference to race, colour or national or ethnic origin, the persons or class of persons who may be the licensees or invitees of the occupier of any land or residential or business accommodation.



## National Housing Rights Legislation



### **New Zealand** The Housing Act (1955)

[The Housing Act of 1955 allows for the purchase of land and dwellings, and the building of dwellings for State housing purposes.] <sup>(23)</sup>



## National Housing Rights Legislation



### New Zealand

#### The Human Rights Commission Act (1977)

##### Article 25(1): Land, Housing and Other Accommodation:

It shall be unlawful for any person, on his own behalf or on behalf or purported behalf of any principal:

- (a) To refuse or fail to dispose of any estate or interest in land or any residential or business accommodation to any other person; or
- (b) To dispose of such an estate or interest or such accommodation to any person on less favourable terms and conditions than are or would be offered to other persons; or
- (c) To treat any person who is seeking to acquire or has acquired such an estate or interest or such accommodation differently from other persons in the same circumstances; or
- (d) To deny any person, directly or indirectly, the right to occupy any land or any residential or business accommodation; or
- (e) To terminate any estate or interest in land or the right of any person to occupy any land or any residential or business accommodation - by reason of the sex, marital status or religious or ethical belief of that person.



## National Housing Rights Legislation



### New Zealand

#### The Residential Tenancies Act No. 120 (1986)

#### Part II Tenancy Agreements (Preliminary Matters)

##### Section 12. Discrimination on certain grounds prohibited -

- (1) Except with prior consent of the Tenancy Tribunal, a landlord shall not, in respect of the grant, continuance, extension, variation, termination, or renewal of a tenancy agreement, discrimination against any person on any of the following grounds:
  - (a) That the person has had a child, or is pregnant, or is not sterile;
  - (b) That it is intended that a child will reside in the premises or that a child will reside is or has been residing in the premises during the tenancy;
  - (c) That the person is unemployed or likely to become unemployed.
- (2) Except with the prior consent of the Tenancy Tribunal, a landlord shall not, in respect of the grant, continuance, extension, variation, termination, or renewal of a tenancy agreement:
  - (a) Instruct any person to discriminate against any other person on any of the grounds set out in subsection (1) of this section; or
  - (b) State an intention (whether by advertisement or otherwise) to discriminate against any person on any of those grounds.
- (3) Discrimination against any person in contravention of subsection (1) of this section, and the giving of an instruction or the stating of an intention in contravention of subsection (2) of this section, is each hereby declared to be an unlawful act.

#### Part II Tenancy Agreements (Preliminary Matters)

##### Section 45. Landlord's responsibilities -

- (1) The landlord shall:
  - (a) Provide the premises in a reasonable state of cleanliness; and
  - (b) Provide and maintain the premises in a reasonable state of repair having regard to the age and character of the premises and the period during which the premises are likely to remain habitable and available for residential purposes; and
  - (c) Comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises; and
  - (d) Compensate the tenant for any reasonable expenses incurred by the tenant in repairing the premises where -
    - (i) The state of disrepair has arisen otherwise than as a result of a breach of the tenancy agreement by the tenant and is likely to cause injury to persons or property or is otherwise serious and urgent; and
    - (ii) The tenant has made a reasonable attempt to give the landlord notice of the state of disrepair.
  - (e) Take all reasonable steps to ensure that none of the landlord's other tenants causes or permits any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises.
- (2) The landlord shall not interfere with the supply of gas, electricity, water, telephone services, or other services to the premises, except where the interference is necessary to avoid danger to any person or to enable maintenance or repairs to be carried out.
- (3) The provisions of subsection (1) of this section shall apply notwithstanding that the tenant has notice of the state of the premises at the time at which the tenancy agreement is entered into.
- (4) Nothing in subsection (1) of this section shall impose upon the landlord any obligation to repair any damage, or compensate the tenant for any want of repair, arising out of any breach, by the tenant of any obligation imposed on tenants by section 40 of this Act.



(5) In this section “premises” includes facilities.



## National Housing Rights Legislation



**Fiji**  
Constitution (2000)

### Article 38(4)

Every person has the right of access, without discrimination on a prohibited ground, to shops, hotels, lodging-houses, public restaurants, places of public entertainment, public transport services, taxis and public places.

### Article 44(1)

The Parliament must make provision for programs designed to achieve for all groups or categories of persons who are disadvantaged effective equality of access to:

- (b) land and housing.

No information on relevant legislative clauses is available from this country.

Should you have such information we would appreciate if you could forward this to [Housing.Policy@unhabitat.org](mailto:Housing.Policy@unhabitat.org)



## National Housing Rights Legislation



### Papua New Guinea Constitution (1975)

#### Article 53<sup>(22)</sup>

... [P]ossession may not be compulsorily taken of any property, and no interest or right over property may be compulsorily acquired except...[in certain circumstances].

- (20) [Where acquisition is permitted, just compensation must be made on just terms determined by the government.]

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## National Housing Rights Legislation



### **Tonga** Constitution (1875)

#### Article 16

It shall not be lawful for anyone to enter forcibly the houses or premises of another or to search for anything or to take anything the property of another except according to law: And should any person lose any property and believe it to be concealed in any place whether house or premises it shall be lawful for him to make an affidavit before a magistrate that he believes it to be concealed in that place and he shall describe particularly the property so concealed and the place in which he believes it to be concealed and the magistrate shall issue a search warrant to the police to search for the property according to the affidavit so made. (Amended by Act 7 of 1967.)

No information on relevant legislative clauses is available from this country.

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## National Housing Rights Legislation



**Afghanistan**  
Constitution (1990)

### Article 17

The state shall promote construction to provide state and cooperative housing and help in the construction of private houses.



## National Housing Rights Legislation



### Algeria

Decree No. 85-212 (1985)

[“Given the extent of the illegal building problem, regulatory measures have been taken to regularize the situation where possible [this decree] determining the conditions of regularization, with respect to their rights of disposal and occupancy, of the situation of the effective occupiers of public and private land subject to title and/or supporting structures not in compliance with the regulations in force.”] [link](#)





## National Housing Rights Legislation



### **Andorra** Constitution (1993)

#### Article 15

Inviolability of the dwelling shall be guaranteed. No one shall enter a dwelling or any other premises against the will of the owner or without a warrant, except in case of flagrant delicto. The privacy of communication shall also be guaranteed, except upon a reasoned court order.

#### Article 5

The Universal Declaration of Human Rights is binding in Andorra.



## National Housing Rights Legislation



**Angola**  
Constitution (1992)

### Article 44

The State shall guarantee the inviolability of the home and the secrecy of correspondence, with limitations especially provided for by law.



## National Housing Rights Legislation



### Antigua and Barbuda Constitution (1981)

#### Article 3

Whereas every person in Antigua and Barbuda is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, regardless of race, place of origin, political opinions or affiliations, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-

- c. protection for his family life, his personal privacy, the privacy of his home and other property and from deprivation of property without fair compensation,

#### Article 9

1. No property of any description shall be compulsorily taken possession of, and no interest in or right to or over property of any description shall be compulsorily acquired, except for public use and except in accordance with the provisions of a law applicable to that taking of possession or acquisition and for the payment of fair compensation within a reasonable time.
2. Every person having a interest in or right to or over property which is compulsorily taken possession of or whose interest in or right to or over any property is compulsorily acquired shall have the right of access to the High Court for-
  - a. the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right and the amount of any compensation to which he is entitled; and
  - b. the purpose of obtaining payment of that compensation:

Provided that if Parliament so provides in relation to any matter referred to in paragraph (a) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right to or over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.

3. The Chief Justice may make rules with respect to the practice and procedure of the High Court or any other tribunal or authority in relation to the jurisdiction conferred on the High Court by subsection (2) of this section or exercisable by the other tribunal or authority for the purposes of that subsection (including rules with respect to the time within which application or appeals to the High Court or applications to the other tribunals or authority may be brought).
4. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section-
  - a. to the extent that the law in question makes provision for the taking of possession or acquisition of any property, interest or right-
    - i. in satisfaction of any tax, rate or due;
    - ii. by way of penalty for breach of the law or forfeiture in consequence of breach of the law;
    - iii. as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
    - iv. in the execution of judgements or orders of a court in proceedings for the determination of civil rights or obligations;
    - v. in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or likely to be injurious to the health of human beings, animals or plants;
    - vi. in consequence of any law with respect to the limitation of actions;
    - vii. for so long as may be necessary for the purposes of any examination, investigation, trial or enquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relation to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out), and except so far as the provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a

democratic society;

- b. to the extent that the law in question makes provision for the taking of possession or acquisition of any of the following property (including and interest in or right to or over property), that is to say-
  - i. enemy property;
  - ii. property of a deceased person, a person of unsound mind or a person who had not attained the age of eighteen years, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;
  - iii. the property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
  - iv. property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or by order of a court for the purposes of giving effect to the trust.
5. Nothing contained in or done under the authority of any law enacted by Parliament shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory taking of possession of any property, or the compulsory acquisition of any interest in or right or over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no monies have been invested other than monies provided by Parliament or any legislature established for the former colony or Associated State of Antigua.
6. For the purposes of this section, "use" is "public" if it is intended to result or results in a benefit or advantage to the public and, without prejudice to its generality, includes any use affecting the physical, economic, social or aesthetic well-being of the public.



## National Housing Rights Legislation



### Argentina Constitution (1994)

#### Article 14

The State shall grant the benefits of social security, which shall be complete and irrenounceable. In particular, the State shall establish: compulsory social security, which shall be in the charge of national or provincial entities with financial and economic autonomy, administered by the interested parties with the participation of the State, but there can be no overlapping of contributions; flexible retirement pay and pensions; full protection of the family; protection of the family welfare; economic compensation to families and access to decent housing.

#### Artículo 22

Aprobar o desechar tratados concluidos con las demás naciones y con las organizaciones internacionales y los concordatos con la Santa Sede. Los tratados y concordatos tienen jerarquía superior a las leyes. La Declaración Americana de los Derechos y Deberes del Hombre; la Declaración Universal de Derechos Humanos; la Convención Americana sobre Derechos Humanos; el Pacto Internacional de Derechos Económicos, Sociales y Culturales; el Pacto Internacional de Derechos Civiles y Políticos y su Protocolo Facultativo; la Convención sobre la Prevención y la Sanción del Delito de Genocidio; la Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial; la Convención sobre la Eliminación de todas las Formas de Discriminación contra la Mujer; la Convención contra la Tortura y otros Tratos o Penas Crueles, Inhumanos o Degradantes; la Convención sobre los Derechos del Niño: en las condiciones de su vigencia, tienen jerarquía constitucional, no derogan artículo alguno de la primera parte de esta Constitución y deben entenderse complementarios de los derechos y garantías por ella reconocidos. Solo podrán ser denunciados, en su caso, por el Poder Ejecutivo nacional, previa aprobación de las dos terceras partes de la totalidad de los miembros de cada Cámara. Los demás tratados y convenciones sobre derechos humanos, luego de ser aprobados por el Congreso, requerirán del voto de las dos terceras partes de la totalidad de los miembros de cada Cámara para gozar de la jerarquía constitucional.

[Establishing that international treaties, including the International Covenant on Economic, Social and Cultural Rights, are incorporated into, and indeed trump, domestic law.]



## National Housing Rights Legislation



### Armenia Constitution (1995)

#### Article 21

Everyone is entitled to privacy in his or her own dwelling. It is prohibited to enter a person's dwelling against his or her own will except under cases prescribed by law.

A dwelling may be searched only by court order and in accordance with legal procedures.

#### Article 28

Everyone is entitled to private property and inheritance. Foreign citizens and persons without citizenship shall not have the right to own land, except in cases prescribed by law. The owner may be deprived of private property only by a court in cases prescribed by law.

Private property may be alienated for the needs of society and the state only under exceptional circumstances, with due process of law, and with prior equivalent compensation.

#### Article 31

Every citizen is entitled to an adequate standard of living for himself or herself and his or her family, to adequate housing, as well as to the improvement of living conditions. The State shall provide the essential means to enable the exercise of these rights.



## National Housing Rights Legislation



### Australia

#### Racial Discrimination Act (1975)

##### Section 12.

- (1) It is unlawful for a person, whether as a principal or agent:
  - (a) To refuse or fail to dispose of any estate or interest in land, or any residential or business accommodation, to a second person;
  - (b) To dispose of such an estate or interest or such accommodation to a second person on less favourable terms and conditions than those which are or would otherwise be offered;
  - (c) To treat a second person who is seeking to acquire or has acquired such an estate or interest or such accommodation less favourably than other persons in the same circumstances;
  - (d) To refuse to permit a second person to occupy any land or any residential or business accommodation; or
  - (e) To terminate any estate or interest in land of a second person or the right of a second person to occupy any land or any residential or business accommodation, by reason of the race, colour or national or ethnic origin of that second person or any relative or associate of that second person.
- (2) It is unlawful for a person, whether as a principal or agent, to impose or seek to impose on another person any term of condition that limits, by reference to race, colour or national or ethnic origin, the persons or class of persons who may be the licensees or invitees of the occupier of any land or residential or business accommodation.



## National Housing Rights Legislation



### **Austria** Constitution (1929)

#### Article 11

In the following matters, legislation is a federal responsibility, and the execution that of the Länder <sup>(61)</sup>: ...

(3) people's housing <sup>(62)</sup>.





## National Housing Rights Legislation



**Bahrain**  
Constitution (1973)

### Article 9

(f) The state shall strive to provide housing for citizens with limited income.



## National Housing Rights Legislation



**Bangladesh**  
Constitution (1972)

### Article 15

It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing its citizens:

- (a) The provision of the basic necessities of life, including food, clothing, shelter, education and medical care.



## National Housing Rights Legislation



### **Belgium** Constitution (1994)

#### Article 23

Everyone has the right to lead a life consistent with human dignity. To that end, the laws, decrees or rules established under article 134 guarantee, taking into account the corresponding obligations, economic, social and cultural rights of which they determine the conditions for their implementation. These rights include, in particular,

- (3) The right to adequate housing.



## National Housing Rights Legislation



### **Belgium**

Law Onkelinx (1993)

[Enables the requisition of abandoned buildings and their transformation by the local authorities into dwellings for homeless people.] <sup>(22)</sup>



## National Housing Rights Legislation



### **Bermuda**

#### Parish Assistance Act (1968)

[Social assistance is available to any individual who does not have enough income to cover basic needs (which have been defined as food, shelter, clothing, fuel, utilities, household supplies and personal requirements; funerals and burials; and health care services.) [49](#)]



## National Housing Rights Legislation



### **Bolivia** Constitution (1967)

#### Article 158

The State has the obligation to defend human capital by protecting the health of the population; it shall ensure the continuity of its means of livelihood and the rehabilitation of disabled persons; it shall also strive for the improvement of the living conditions of the family as a group.

The social security system shall be based on the principles of universal coverage, solidarity, uniformity of treatment, economy, timeliness and effectiveness, embracing the contingencies of illness, maternity, occupational hazards, disability, old age, forced shutdown, family allocations and social housing.

#### Article 199

The State shall protect the physical, mental and moral health of children, and shall uphold the rights of children to a home and to an education.



## National Housing Rights Legislation



**Bolivia**

Act No. 1493 (17 September 1993)

### Article 19(f).

[The Ministry of Human Development maintains responsibility in the] formulation, implementation and supervision of policies and programmes in: ... urban development, with promotion of the construction of subsidized housing and attention to the problems of urban and rural marginalization.



## National Housing Rights Legislation



**Bolivia**

Act No. 23660 Regulating the Ministries Act (12 October 1993)

Article 79.

[One of the aims of the National Secretary for Urban Affairs is] ... to promote urban development policy and access by the population to adequate housing.





## National Housing Rights Legislation



### **Bolivia**

Supreme Decree No. 22407 (19 February 1990)

[Chapter VI of which calls for the implementation of a National Housing Plan to diminish the country's housing deficit, particularly through the organization of the Low-Cost Housing Plan.] [↗](#)



## National Housing Rights Legislation



### **Bolivia**

Supreme Decree No. 23261 (15 September 1992)

[“The State has created facilities to enable the maximum number of persons to accede to housing of their own, such as the National Subsidized Housing Fund (FONVIS) set up under Supreme Decree No. 23261 of 15 September 1992 with the primary aim of reducing the housing deficit.”] [uu](#)



## National Housing Rights Legislation



### **Bosnia and Herzegovina** Constitution (1995)

#### Article 2 (1) Human Rights

Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. To that end, there shall be a Human Rights Commission for Bosnia and Herzegovina as provided for in Annex 6 to the General Framework Agreement.

#### Article 2 (2) International Standards

The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.

#### Article 2 (5) Refugees and Displaced Persons

All refugees and displaced persons have the right to freely return to their homes of origin. They have the right, in accordance with Annex 7 to the General Framework Agreement, to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void.



## National Housing Rights Legislation



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## National Housing Rights Legislation



### Bosnia and Herzegovina

#### Law on the Cessation of the Application of the Law on Abandoned Apartments (1998) (Bosnia and Herzegovina) (relevant provisions) <sup>(56)</sup>

#### I. GENERAL PROVISIONS

##### Article 1

The Law on Abandoned Apartments (“Official Gazette of RBH” no. 6/92, 8/92, 16/92, 13/94, 36/94, 9/95 and 33/95), Decree on Use of Abandoned Apartments (Official Gazette HZHB 13/93) and the regulations passed there under, as well as other regulations regulating the issue of abandoned apartments passed between 30 April 1991 and the entry into force of this Law which are being applied on the territory of the Federation of Bosnia and Herzegovina (hereinafter: the Federation) shall cease to be applied on the day of the entry into force of this law.

Following the entry into force of this Law, the authorities of the Federation and other bodies in the Federation shall refrain from undertaking any new actions by which apartments will be declared abandoned.

The competent bodies referred to in Paragraph 2 of this Article shall decide about the rights of occupancy right holders to return to their apartments which have been declared temporarily or permanently abandoned and the rights of temporary occupants of the abandoned apartment, and about further use of the apartment, in accordance with the provisions of this Law and the Law on Taking over the Law on Housing Relations (hereinafter: the ZOSO).

##### Article 2

All administrative, judicial and any other decisions enacted on the basis of the regulations referred to in Paragraph 1 of Article 1 of this Law terminating occupancy rights shall be null and void.

All administrative, judicial and any other decisions enacted on the basis of the regulations referred to in Paragraph 1 of Article 1 of this Law in which rights of temporary occupancy have been created shall remain effective until cancelled in accordance with this Law. Persons who moved into apartments on the basis of acts which have expired shall be considered to be temporary users. Article 3, Paragraph 3 of this Law shall not apply to such persons.

All administrative, judicial and any other decisions including the acts of allocation right holders enacted on the basis of the regulations referred to in Paragraph 1 of Article 1 of this Law in which new occupancy rights are created, as well as the contracts concluded pursuant to those acts, shall remain in force unless cancelled in accordance with this Law.

##### Article 3

The occupancy right holder of an apartment declared abandoned or a member of his/her household as defined in Article 6 of the ZOSO (hereinafter the “occupancy right holder”) shall have the right to return in accordance with Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina.

Paragraph 1 of this Article shall be applied only to those occupancy right holders who have the right to return to their homes of origin under Annex 7, Article 1 of the General Framework Agreement for Peace in Bosnia and Herzegovina. Persons who have left their apartments since 30 April 1991 are presumed to be refugees and displaced persons under Annex 7 absent a showing that they left their apartments for reasons wholly unrelated to the conflict.

Holder of occupancy right in the apartment which is inhabited by a person using the apartment without legal basis or which is vacant as of the date this Law enters into force shall be able, without any restrictions, to repossess the apartment in which he has an occupancy right. Persons using the apartment without legal basis shall be evicted and the authorities competent for allocation of emergency accommodation shall not be obliged to provide emergency accommodation to such persons.

A temporary user of an apartment who is required to vacate the apartment pursuant to the provisions of this Law and whose housing needs are otherwise met shall be obliged to move out from the apartment that he/she has been using within 90 days of the date of the issuance of the Decision by which it has been decided about the right of an occupancy right holder to the relevant apartment (hereinafter: the Decision under Article 6).

A temporary user of an apartment who is required to vacate the apartment pursuant to the provisions of this Law and whose housing needs are not otherwise met, shall be provided with accommodation in accordance with the ZOSO by the administrative body on the territory of which she/he had his/her latest domicile or residence. The temporary user shall be obliged to move out of the apartment within the deadline set in Article 7 of this Law.

Within thirty days of a Decision under Article 6 of this Law which concerns an apartment inhabited by a new

occupancy right holder on the basis of a decision of the allocation right holder, or of a contract (hereinafter: the current occupant), the allocation right holder shall refer the case to the responsible cantonal administrative authority which shall pass a decision on allocation of another apartment to the current occupant or the occupancy right holder, within 30 days from the date the case has been submitted.

If the responsible cantonal authority decides that the occupancy right holder should be allocated another apartment, the decision shall be made in accordance with the criteria which must comply with Article 1. of Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina, in accordance with the European Convention of Human Rights and its Protocols, as well as the Law on Housing Relations. These criteria shall be developed by the Federation Ministry of Urban Planning and Environment, in consultation with organizations competent for the implementation of the standards mentioned in this Paragraph.

In all cases in which the current occupant remains in the apartment, all moveable property of the occupancy right holder found in the apartment must be returned to him/her upon his/her request.

In no event shall the failure of the cantonal authorities or of an allocation right holder to meet their obligations under this Article, or the failure of the current occupancy right holder to accept an apartment, operate to delay the ability of an occupancy right holder to reclaim the apartment.

## II. THE PROCEDURE FOR REPOSSESSION OF AN APARTMENT AND THE RIGHTS OF THE OCCUPANCY RIGHT HOLDER

### Article 4

The occupancy right holder as defined in Article 3, Paragraph 1 of this Law shall be entitled to claim the repossession of an apartment.

A claim for repossession of an apartment shall be presented to the municipal administrative authority competent for housing affairs, unless otherwise determined by cantonal law.

The claim shall be submitted in writing signed by the occupancy right holder or orally, in person by the occupancy right holder or an authorized representative.

A claim should include:

1. information on the apartment;
2. any evidence that the claimant is the holder of an occupancy right or a member of the latter's household;
3. the date when the occupancy right holder intends to reoccupy the apartment, but not later than one year from the date of submitting the claim; and
4. information on the place of residence of the occupancy right holder and the members of the occupancy right holder's household at the time the claim is filed.

### Article 5

A claim for repossession of the apartment must be filed within six months from the date of the entry into force of this Law.

If the occupancy right holder does not file a claim within the time limit referred to in the previous paragraph, the occupancy right is cancelled.

### Article 6

Upon the receipt of a claim for return of the apartment to the occupancy right holder, the competent authority shall decide on the claim by a decision within 30 days from the date of receipt of the claim.

### Article 7

The decision referred to in the preceding Article by which the claim of the occupancy right holder is accepted, shall contain:

1. a decision confirming that the claimant is the holder of the occupancy right;
2. a decision on repossession of the apartment by the occupancy right holder if there is a temporary user in the apartment, or if the apartment is vacant or occupied without legal basis;
3. a decision on termination of the right of temporary use of the apartment, if there is a temporary user in the apartment;
4. a time limit for vacating the apartment by a temporary user or another person occupying the apartment;

5. a decision concerning whether the temporary user is entitled to accommodation in accordance with the ZOSO.

The deadline for vacating the apartment, referred to in Paragraph 1(4) of this Article may not be shorter than 90 days from the date of the issuance of the decision, nor longer than the day of intended return of the holder of occupancy right, and the day of intended return may not be earlier than 90 days from the date of submitting the claim.

In exceptional circumstances, the deadline referred to in Paragraph 2 of this Article may be extended to up to one year if the municipality or the allocation right holder responsible for providing alternative accommodation in accordance with Article 3 of this Law provides detailed documentation regarding its efforts to secure alternative accommodation to the cantonal administrative authority responsible for housing affairs, and the cantonal authority finds that there is a documented absence of available housing. In each individual case, the requirements of the European Convention on Human Rights and its Protocols must be met, and the occupancy right holder must be notified of the decision to extend the deadline and the basis for the decision 30 days before the deadline has expired.

#### Article 8

The competent administrative body shall deliver the decision within 5 days from the date of issuance of the decision to:

1. the occupancy right holder;
2. the occupant of the apartment ;
3. the allocation right holder.

Any appeal against a decision must be submitted to the cantonal ministry responsible for housing affairs within 15 days from the date of receipt of the decision.

An appeal shall not suspend the execution of the decision.

#### Article 9

The handing over of the apartment to the occupancy right holder shall be witnessed by an official of the competent authority. .

The handing over of the apartment and its contents shall be recorded in the minutes including, among other things, a detailed description of the current state of the apartment and its contents.

#### Article 10

Proceedings in the cases initiated by the claims referred to in Article 4 of this Law shall be considered urgent.

#### Article 11

If the person occupying the apartment fails to voluntarily comply with a decision ordering him/her to vacate the apartment, the competent administrative body shall employ compulsory enforcement in accordance with law.

The enforcement shall be carried out at the request of the occupancy right holder.

#### Article 12

The occupancy right shall terminate by the force of the law if the occupancy right holder fails, without good cause, to reoccupy the apartment within one year from the date when his right to return to the apartment has been established by a final decision.

The occupancy right holder is considered to have good cause not to reoccupy the apartment:

1. if s/he has requested the commencement of enforcement proceedings, but the apartment continues to be occupied by another party;
2. if s/he has been unable to return to the municipality in which the apartment is located due to a well-founded fear of persecution;
3. if the occupancy right holder was called up for military service;
4. if the occupancy right holder has been receiving medical treatment;
5. if the occupancy right holder is staying in a retirement house;
6. if the occupancy right holder has been convicted and is serving a prison sentence for this period;
7. if security measures are being applied to the occupancy right holder;
8. if the occupancy right holder and the members of his/her household are temporarily staying in an other place

- in the country or abroad on the bases stated in paragraph 1 of Article 48 of the ZOSO; or
9. if the apartment is the subject of an unresolved claim submitted to the Commission for Real Property Claims of Displaced Persons and Refugees.

In the cases referred to in Paragraph 1 of this Article, as long as these reasons last, the right of the occupancy right holder to use the apartment shall not terminate.

### Article 13

Upon the cancellation of an occupancy right under Articles 5 or 12 of this Law, the allocation right holder may allocate the apartment for use to the temporary occupant or to another party in accordance with the provisions of the ZOSO.

Where the apartment is allocated to another party under the paragraph 1 of this Article, the temporary occupant of the apartment must vacate the apartment within 60 days of being notified of the final decision on allocation of the apartment to another occupant.

## III. CLAIMS TO THE COMMISSION FOR REAL PROPERTY CLAIMS OF DISPLACED PERSONS AND REFUGEES

### Article 14

A party affected by a decision made under Article 7 may at any time file a claim with the Commission for Real Property Claims of Displaced Persons and Refugees (GFAP, Annex 7, hereinafter the Property Commission). In the event that such a claim is filed, all proceedings, including execution of decisions or orders, shall be stayed pending the final decision of the Property Commission.

A decision of the Property Commission is final and binding.

Following a decision of the Property Commission, the rights and obligations of the party referred to in Paragraph 1 of this Article shall be the same as if the decision of the Property Commission was a decision of the competent authorities made in accordance with this law.

## IV. PURCHASE OF APARTMENTS WHICH HAVE BEEN DECLARED ABANDONED

### Article 15

The occupancy right holder, whose contract on the use of the apartment was cancelled in the period between 30 April 1991 and the entry into force of this Law, on the basis of regulations referred to in Article 1 of this Law and Article 47 of the ZOSO, and whose apartment has been returned to him in line with this Law has the right to purchase the apartment in the sense of the Law on Sale of Apartments with Occupancy Right.

The occupancy right holder shall acquire the right to purchase after he has been using the apartment for a period of at least six months.

The occupancy right holder may not sell the apartment within 5 years from the day of the registration of his ownership right, and this shall be noted in the land books or other respective registers on rights in real property.

The prohibition of purchase of the apartment by the current holder of occupancy right shall last until the deadline for the former occupancy right holder to submit the claim for repossession of the apartment has expired, i.e. until the proceedings under this Law have been finalized.

## V. FINAL PROVISIONS

### Article 16

Contracts on the use of apartments declared abandoned in accordance with the regulations referred to in Article 1 (1) of this Law, as well as other decisions on allocation of apartment for use issued after 7 February 1998 are null and void.

Provision referred to in Paragraph 1 of this Article shall also apply to contracts on the use of apartment if they were concluded before 7 February 1998 but their beneficiary did not move into the apartment.

Any person who uses an apartment on the basis of a decision or contract referred to in Paragraph 1 of this Article shall be considered to occupy the apartment without legal basis.

### Article 17

The Federation Minister of Urban Planning and Environment shall pass an instruction on the application of Article 4 of this Law within 30 days from the date of the entry into force of this Law.



#### Article 18

The procedure for the return of apartments to the possession of the occupancy right holders determined by this law shall be carried out in accordance with the Law on General Administrative Procedure (“Official Gazette of FBiH” No. 2/98), unless otherwise stipulated by this law.

#### Article 19

This law shall enter into force on the day following its publication in the “Official Journal of the Federation of Bosnia and Herzegovina”.



## National Housing Rights Legislation



### Bosnia and Herzegovina

Law on the Cessation of the Application of the Law on Abandoned Apartments (2 December 1998) (Republika Srpska) <sup>(58)</sup>

#### I. GENERAL PROVISIONS

##### Article 1

The Law on Use of Abandoned Property (Official Gazette of RS, Nos. 3/96 and 21/96) shall cease to be in force, as well as the regulations passed there under and other regulations regulating the issues of abandoned property and apartments passed between 30 April 1991 and the entry into force of this Law.

##### Article 2

All administrative, judicial, and any other decisions enacted on the basis of the regulations referred to in Article 1 of this Law in which rights of temporary occupancy have been created shall remain effective until cancelled in accordance with this Law.

All administrative, judicial, and any other decisions enacted on the basis of the regulations referred to in Article 1 of this Law in which new occupancy rights have been created shall be treated as acts granting rights of temporary occupancy until cancelled in accordance with this Law.

All administrative, judicial and any other acts and any other disposals of real estate and apartments, enacted on the basis of the regulations referred to in Article 1 of this Law shall cease to be effective after a claim has been filed by the authorised claimant.

#### II. RETURN OF PROPERTY TO PRIVATE OWNERS, POSSESSORS OR USERS

##### Article 3

The owner, possessor or user of the real property who abandoned the property shall have the right to repossess the real property with all the rights which s/he had before 30 April 1991 or before the real property became abandoned.

##### Article 4

For the purpose of this Law, the owner, possessor or user shall be understood to mean the person who was the owner, possessor or user of the real property under the applicable legislation at the time when the real property became abandoned.

##### Article 5

A user to whom the real property was allocated for temporary use pursuant to the Law on the Use of Abandoned Property (hereinafter referred as: the temporary user) may continue to use the real property under the conditions and in the manner as provided by the Law on the Use of Abandoned Property until a decision referred to in Article 11 of this Law has been issued.

##### Article 6

If the temporary user who is required to vacate the property pursuant to the provisions of this Law cannot or does not wish to return to the apartment in which s/he lived before 30 April 1991 and who has not been provided with another apartment meeting the conditions of appropriate accommodation, the responsible body of the Ministry of Refugees and Displaced Persons on the territory of which s/he had his/her last domicile or residence shall provide him/her with appropriate accommodation within the deadline set in the decision ordering him/her to move out.

If the temporary user referred to in Paragraph 1 of this Article presents evidence that s/he submitted a claim for repossession of his/her property, s/he may not be evicted by force until s/he is enabled to return or freely dispose of his/her property, in line with Annex 7 of the General Framework Peace Agreement for Bosnia and Herzegovina or until an alternative accommodation has been provided in another way within one year.

If the request of the temporary user and free disposal of his/her property has been resolved, in no event shall failure of the responsible body to meet its obligations under paragraph 1 of this Article operate to delay the ability of the owner, possessor or user to enter into possession of his/her property.

The body responsible for the provision of accommodation shall not be obliged to provide an accommodation to a

person using the apartment without valid legal basis.

#### Article 7

The owner, possessor or user of abandoned real property, or his/her authorised representative, shall have the right to file a claim at any time for the repossession or disposal in another way of his/her abandoned property.

The right of the owner to file a claim shall not become obsolete.

#### Article 8

A claim under Article 7 of this Law may be filed by the owner, possessor or user of abandoned real property with the responsible body of the Minister of Refugees and Displaced Persons in the municipality on the territory of which the real property is located.

Claims may be made in writing signed by the claimant or an authorised representative, or orally by the claimant or an authorised representative. Claims made in writing may be submitted in person, by mail or by any other person. No power of attorney is required for another person to submit a claim signed by the claimant.

A claim should include:

1. information on the owner, possessor or user;
2. all necessary information on the real property;
3. any evidence possessed by the claimant indicating that the claimant is the owner, possessor or user of the real property;
4. the date when the claimant intends to repossess the real property.

The responsible body shall accept claims regardless of whether or not supporting documentation is supplied by the claimant. In the event that the claimant cannot provide the necessary supporting documentation, the responsible body shall check the records of the relevant court or administrative body and any other available documentation to confirm the rights of the claimant.

The responsible body shall accept any identification document issued by the state of Bosnia and Herzegovina or any administrative body in either Entity, and any other document which shows the claimant's identity, and shall use any options provided in the Law on General Administrative Proceedings in the identification process.

The claimant shall be fully released from taxation, as well as from other expenses of the proceedings as provided in Articles 113 through 119 of the Law on General Administrative Proceedings ("The SFRY Official Gazette", No. 47/86, "The RS Official Gazette", No. 1/94, Special Issue 10/95).

#### Article 9

The responsible body of the Ministry of Refugees and Displaced Persons shall be obliged to issue a decision to the claimant within 30 days from the date of receipt of the claim for repossession of real property.

#### Article 10

The proceedings to return the real property to the owner, possessor or user shall be carried out in accordance with the provisions of the Law on General Administrative Proceedings, unless this Law provides otherwise. The procedure until the issuance of the decision shall be carried out as an expedited procedure.

#### Article 11

The decision on return of the real property to the owner, possessor or user shall contain the following:

- information on the owner, possessor or user to whom the real property is returned,
- information on the real property subject to return,
- the time limit within which the real property will be returned or put at disposal of the owner, possessor or user,
- a decision whether the temporary user is entitled to appropriate accommodation,
- a decision terminating the right of the temporary user to use the real property as of the date of the intended return of the claimant,
- the time limit for the temporary user to vacate the property, or for handing over of the land.

The decision under Paragraph 1 of this Article may not set a time limit for the temporary user to vacate the property shorter than 90 days from the date of the issuance of the decision, nor longer than the date of the intended return of the owner, possessor or user, but the day of the intended return may not be earlier than 90 days from the date of

submitting the claim.

The claimant may reoccupy property that is not in possession of a temporary user immediately on receipt of the decision.

In exceptional circumstances, the deadline referred to above may be extended by up to one year if the body responsible for providing another accommodation in accordance with Article 6 of this Law provides detailed documentation regarding the lack of available accommodation to the Ministry of Refugees and Displaced Persons.

In case of the return of arable land into possession, the time limit for its handing over may be extended, as an exception, until the harvest is collected.

#### Article 12

The responsible body of the Ministry of Refugees and Displaced Persons shall submit its decision to the claimant requesting the repossession of the property and the temporary user of the property.

#### Article 13

The party to whom the decision under Article 11 of this Law is referred may at any time initiate proceedings before the Commission for Real Property Claims of Displaced Persons and Refugees (Annex 7 to the General Framework Agreement of Peace in Bosnia and Herzegovina, hereinafter referred to as the Commission).

In case that the proceedings under Paragraph 1 of this Article have been initiated, all other proceedings carried out before the competent bodies, including the procedure to enforce the decision referred to in Article 11 of this Law, shall be stayed pending the final decision of the Commission.

A decision of the Commission shall be final and binding.

In the light of specifying the rights and obligations of the party referred to in Paragraph 1 of this Article, the decision of the Commission shall have the same legal force as the decision of any other responsible body issued in accordance with this Law.

A decision of the Commission shall be enforced by the competent bodies of the Republika Srpska.

### III. RETURN OF APARTMENTS TO THE HOLDERS OF OCCUPANCY RIGHT

#### Article 14

The occupancy right holder of an abandoned apartment shall have the right to return to the apartment in accordance with Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina.

Persons who have left their apartments after 30 April 1991, are presumed to be refugees and displaced persons under Annex 7, unless it is established that they left their apartments for reasons wholly unrelated to the conflict.

#### Article 15

The occupancy right holder referred to in Article 14 of this Law shall be entitled to file a claim for repossession of the apartment.

A claim for repossession of the apartment shall be filed with the responsible body of the Ministry of Refugees and Displaced Persons in the municipality in which the apartment is located.

A claim for repossession of the apartment should include:

- information on the claimant;
- information on the apartment;
- evidence that the claimant is the occupancy right holder or a member of the latter's family household;
- the date when the claimant intends to reoccupy the apartment, but not later than one year from the date of submitting the claim;
- information on the residence of the occupancy right holder and members of his/her household at the time when the claim is submitted.

If the temporary user of the apartment presents evidence that s/he submitted a claim for return of his/her occupancy right, s/he shall not be evicted by force from the apartment allocated to him/her for temporary use until s/he is enabled to freely dispose of his/her apartment, or until an appropriate accommodation has been provided in another way within one year.

The responsible body shall accept all claims with or without the appropriate documents enclosed by the claimant. In cases when the claimant is not able to provide the necessary relevant documents, the responsible body shall verify

the evidence, as well as other available documents, with the allocation right holder, the appropriate court or administrative body in order to have the rights of the claimant confirmed.

The responsible body shall accept any identification document issued by the state of Bosnia and Herzegovina or any legal body in either Entity, as well as any other document confirming the identity of the claimant.

The claimant shall be fully exempted from taxation as well as from other expenses of the proceedings, as provided in Articles 113 through 119 of the Law on General Administrative Proceedings.

#### Article 16

A claim for repossession of the apartment may be filed within 6 months from the date of entry into force of this Law.

If the occupancy right holder does not file a claim within the time limit referred to in the previous paragraph, his/her occupancy right shall be cancelled.

#### Article 17

The responsible body of the Ministry of Refugees and Displaced Persons shall decide on the claim for the repossession of the apartment by the occupancy right holder within 30 days from the date of receipt of the claim.

The allocation right holder shall refer the case to the responsible municipal or city administrative body within 30 days from the issuance of the decision referred to in the Article above which relates to the apartment occupied by the new occupancy right holder based on an act issued by the allocation right holder, i.e. contract (hereinafter: the current user). The responsible municipal or city administrative body shall then pass a decision on the allocation of another apartment to the current user or occupancy right holder within a deadline which cannot be longer than the deadlines referred to in Article 18 of this Law.

If the responsible municipal body has decided to allocate another apartment to the occupancy right holder, this Decision shall have to be passed in accordance with the criteria which must be harmonised with Article 1 Annex 7 of the General Framework Agreement in line with the European Convention on Human Rights and with other regulations of the Republika Srpska.

#### Article 18

The decision on repossession of the apartment by the occupancy right holder shall contain:

- a decision confirming that the claimant is the occupancy right holder;
- a decision on repossession of the apartment by the occupancy right holder if there is a temporary user in the apartment, or if the apartment is vacant or occupied without legal basis;
- a decision on termination of the right of temporary use of the apartment if there is a temporary user of the apartment;
- a time limit for vacating the apartment by a temporary user or another person in possession of the apartment;
- a decision concerning whether the temporary user is entitled to accommodation in accordance with the ZOSO.

The time limit for vacating the apartment referred to in Paragraph 1(4) of this Article may not be shorter than 90 days from the date of the issuance of the decision, nor longer than the day of the intended return of the holder of the occupancy right, but the day of the intended return may not be earlier than 90 days from the date of submitting the claim.

The occupancy right holder may reoccupy an apartment that is vacant immediately on receipt of the decision, unless the apartment is in possession of a temporary user in accordance with this Law.

In exceptional circumstances, the deadline referred to in Paragraph 2 of this Article may be extended by up to one year if the body responsible for providing alternative accommodation on the territory of which the temporary user of the apartment had the last domicile or residence provides detailed documentation regarding the lack of available housing for provision of appropriate accommodation the Ministry for Refugees and Displaced Persons.

In each individual case, the requirements of the European Convention on Human Rights and its Protocols must be met, and the occupancy right holder shall be notified of the decision to extend the deadline and the basis for the decision 30 days before the deadline has expired.

#### Article 19

The responsible body shall deliver the decision referred to in Article 18 of this Law within 8 days from the date of issuance of the decision to:

- the occupancy right holder;

- the user of the apartment;
- the allocation right holder.

#### Article 20

The proceedings to return the apartment to the occupancy right holder shall be carried out in accordance with the provisions of the Law on General Administrative Proceedings, unless this Law provides otherwise.

#### Article 21

The occupancy right to the apartment shall cease in case the occupancy right holder fails to reoccupy the apartment without a justified cause, within one year from the day when the decision becomes final.

The reason for which the occupancy right holder failed to commence to use the apartment shall be deemed justified:

- if the occupancy right holder has initiated an enforcement procedure, while the other party continues to occupy that apartment;
- if the occupancy right holder is unable to return to the municipality where the apartment is located for the reason of his/her justified fear of persecution;
- if the occupancy right holder has been drafted into the army;
- if the occupancy right holder is admitted to medical care;
- if the occupancy right holder is in the old peoples' home, disabled peoples' home, pensioners' home, etc.
- if the occupancy right holder is serving a prison sentence during the period of imprisonment sentence;
- if a certain security measure is being taken against the occupancy right holder;
- if the occupancy right holder and members of her/his family household temporarily reside in a different place within the country or abroad for the reasons mentioned in Paragraph 1 of Article 48 of the ZOSO; or
- if an apartment is the subject of the claim submitted to the Commission for the Real Property Claims of the Displaced Persons and Refugees.

The occupancy right holder's right to use the apartment shall not cease in the cases referred to in the previous paragraph.

#### Article 22

Upon the cancellation of the occupancy right under Articles 16 and 21 of this Law, the allocation right holder may allocate the apartment for use to the temporary user or another person in accordance with the provisions of the ZOSO.

If the temporary user has been issued a decision by the Ministry of Refugees and Displaced Persons, s/he shall stay in possession of such an apartment until he is provided with another appropriate accommodation.

#### Article 23

The party referred to in the decision under Article 18 of this Law may initiate at any time proceedings before the Commission for Real Property Claims of Displaced Persons and Refugees (Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina, hereafter: the Commission).

In case that such proceedings have been initiated, all other proceedings carried out before the competent bodies, including the procedure to enforce the decision, shall be stayed pending the final decision of the Commission.

A decision of the Commission shall be final and binding.

In the light of specifying the rights and obligations of the party referred to in Paragraph 1 of this Article, the decision of the Commission shall have the same legal force as the decision of any other responsible body issued in accordance with this Law.

A decision of the Commission shall be enforced by the competent body of Republika Srpska.

### IV - SPECIAL PROVISIONS

#### Article 24

The repossession of abandoned real property or the apartment by the owner, user or occupancy right holder shall be witnessed by an official and interested parties.

A report shall be made on the return of the real property or apartment and on the reinstatement of the owner or user into possession of the property or apartment. The report shall contain a detailed description of the real property under the process of return.

#### Article 25

The provisions of this Law shall also apply to the abandoned real property the ownership of which has been acquired after 30 April 1991 under any title on sale of real property (contracts on exchange, purchase, gift, etc.)

#### Article 26

The provisions of this Law regulating the manner of repossession of the real property or apartment by the owner, possessor or user shall also apply regarding repossession of the real property allocated to temporary users on the basis of rationalisation (excess housing space).

#### Article 27

A decision on repossession of real property may be appealed with the Ministry of Refugees and Displaced Persons within 15 days from the date of the receipt of the decision.

#### Article 28

The conditions for and the manner of the purchase of an apartment for the occupancy right holders to whom the apartments have been returned in accordance with this Law shall be regulated by a separate law.

#### Article 29

The Minister of Refugees and Displaced Persons shall pass an instruction on the application of Articles 8 through 11 and Articles 15 through 18 of this Law within 30 days from the date of the entry into force of this Law.

#### Article 30

This Law shall enter into force on the 8th day after its publication in the Official Gazette of the Republika Srpska.



## National Housing Rights Legislation



### Bosnia and Herzegovina

Law on the Sale of Apartments with Occupancy Rights (6 December 1997) (Bosnia and Herzegovina) <sup>(57)</sup>

#### I. GENERAL PROVISIONS

##### Article 1

This Law shall regulate conditions and method of sale of apartments with occupancy right together with the common parts and facilities of the building, as well as the method of determining the price of the apartment and cessation of occupancy right.

##### Article 2

Apartment and auxiliary premises shall be understood to mean premises or a set of premises as defined by provisions of the Law on Housing Relations ("Official Gazette of SR BiH" No: 14/84, 12/87 and 13/89 - hereinafter: the Law on Housing Relations).

##### Article 3

An apartment shall be purchased with the common parts and facilities of the building which serve to the building as a whole, together with the land under the building.

Common parts and facilities of the building are defined by provisions of the Law on Housing Relations.

Premises with occupancy right which are not considered as an apartment may also be subject to sale, if it is prescribed by regulations that they may be subject to transactions.

A garage shall also be subject to sale, if it makes a building unit with the apartment or if it was given to the occupant for use as an integral part of the apartment.

##### Article 4

For the purposes of this Law, the following shall not be considered as an apartment:

1. premises in buildings for accommodation of individual persons,
2. premises in buildings for temporary accommodation and
3. premises in administrative and business buildings.

##### Article 5

Provisions of this Law shall not be applied to sale of apartments:

1. which are located in buildings for which a procedure for demolition has been initiated,
2. which are intended for living while performing official duties,
3. which are located in business buildings used for the activities of state administration, Federal administration, judiciary, health care, transport and communications.

##### Article 6

Apartments owned by legal entities whose seats are in the territory of the Federation of Bosnia and Herzegovina (hereinafter: the Federation), and which are located in the territory of the states formed after the dissolution of the former SFRY, shall be sold in the manner regulated in the respective state and under conditions of reciprocity, unless otherwise regulated by an inter-state agreement.

A foreign citizen, under conditions stipulated by this Law, may purchase an apartment only if a citizen of Bosnia and Herzegovina is entitled to purchase an apartment in the respective state.

#### II. RIGHT TO BUY APARTMENT

##### Article 7

Any holder of occupancy right, except in the case referred to in Article 5 of this Law, may submit a written request for buying an apartment to the holder of the right to dispose with the apartment (hereinafter: the seller) and the seller



shall be obliged to sell it.

Request from paragraph 1 of this Article shall be submitted within two years from the day of the application of this Law, and contract on sale of the apartment (hereinafter: the contract) must be concluded within three months from the day the request for buying apartment has been submitted.

If the seller does not conclude the contract upon the request of the holder of occupancy right who wants to purchase the apartment within the deadline referred to in paragraph 2 of this Article, the buyer shall have the right to initiate judicial proceedings.

The court ruling shall replace the contract in its entirety. As an exception, the term for the conclusion of the contract concerning an apartment for which all facts relevant for the sale of the apartment were not established at the time the request for purchasing the apartment had to be submitted, shall be counted from the day of the establishment of these facts.

Facts relevant for the sale of an apartment shall be evaluated at the time of the conclusion of the contract.

#### Article 8

Occupancy right holder shall be considered to be the person to whom the apartment was allocated for use by the owner i.e. the allocation right holder of the apartment, and who had signed the contract on the use of the apartment or the person to whom the apartment was allocated by final and binding judicial decision, as well as the person to whom this right was recognised by the act of a competent body in accordance with the Law on Housing Relations.

#### Article 8a

The occupancy right holder over an apartment which was proclaimed as abandoned by special regulations applied at the territory of Federation Bosnia and Herzegovina during the period of 30 April 1991 to 4 April 1998, shall acquire the right to purchase the apartment in compliance with the provisions of this Law upon expiry of two year deadline after his/her reinstatement in the apartment.

In the decision-making procedure related to the claim for purchase of the apartment, the owner of the apartment shall be obliged to establish, on the basis of available documentation, whether the claimant is the occupancy right holder referred to in paragraph 1 of this Article.

A contract on sale of the apartment concluded in contravention of the provisions in paragraph 1 of this Article shall be null and void.

The occupancy right holder referred to in paragraph 1 of this Article may submit a claim for purchase of the apartment in accordance with Article 7, paragraph 1 of this Law, within a six months deadline of a day on which he acquired the right to purchase the apartment.

#### Article 9

Under conditions prescribed by this Law, the members of the close family household of the occupancy right holder may also buy an apartment, with the approval of or in case of death of the occupancy right holder.

Members of the close family household of the occupancy right holder shall be considered to be the persons referred to in the Law on Housing Relations.

#### Article 10

Under conditions prescribed by this Law the occupancy right holder, his/her spouse or a member of his/her close family household may purchase only one apartment.

Any contract concluded in violation of provision referred to in paragraph 1 of this Article shall be null and void.

#### Article 11

Spouses may buy an apartment together, and one of them may buy it only with the approval of the other one.

If co-tenants have the occupancy rights on one apartment, they shall buy the apartment together each the part on which he/she has the occupancy right, unless they agree otherwise.

As an exception from paragraph 2 of this Article, if one or more co-tenants do not submit the request for buying their parts of the apartment within the deadline referred to in Article 7 of this Law, other co-tenants shall have the right to buy the apartment.

Approval and agreement referred to in paragraphs 1 and 2 of this Article shall be given in the contract or in a separate document with certified signature.

In case the approval is not given, or the agreement is not reached, the decision shall be made in the judicial

proceedings.

#### Article 12

Apartments shall be sold by the seller from Article 7 (1) of this Law.

#### Article 13

Apartments whose seller is unknown shall be sold by the municipality.

#### Article 14

For the purposes of this Law, an apartment whose seller is unknown shall be understood to mean an apartment whose holder of the right of disposal is a legal entity which did not register its activities according to the current regulations, or which ceased to operate and its legal successor is unknown or not determined, or whose seat is unknown, and the occupancy right holder is not able to file the request for buying the apartment within the deadline prescribed by Article 7 (2) of this Law.

In case referred to in paragraph 1 of this Article the occupancy right holder shall submit the request to the competent service of the municipality in which the apartment is located.

After having completed the required procedure, the competent service of the municipality shall allow the occupancy right holder who fulfils the conditions prescribed by this Law to purchase the apartment, and shall conclude the contract within the deadline referred to in Article 7 of this Law.

#### Article 15

Apartments whose holders of the right of disposal were the former JNA and the SSNO (Federal Secretariat of National Defence) shall be sold by the Federation Ministry of Defence, in accordance with this Law.

An organisational unit of the Federation Ministry of Defence on the municipal level shall sell the apartments from paragraph 1 of this Article which are on the territory within its jurisdiction.

Apartments whose holders of the right of disposal were the bodies and organisations of former SFRY, with the exception of paragraphs 1 and 2 of this Article, shall be sold by the Cantonal Government on the territory of which the apartment is located.

Apartments which are owned by the bodies and organisations of Bosnia and Herzegovina shall be sold by the Government of the Federation of Bosnia and Herzegovina.

### III. PRICE OF AN APARTMENT

#### Article 16

The price of an apartment shall be defined by contract, depending on:

- the value of the apartment established in accordance with Article 18 of this Law;
- amount of funds of the occupancy right holder which he invested in the apartment;
- depreciation of the apartment;
- level of war damage which the occupancy right holder repaired, or which is to be repaired
- discounts recognised belonging to the purchaser.

#### Article 17

The price of the apartment shall be fixed on the basis of the value of the apartment as defined by Articles 18 to 21 of this Law and reductions as defined by Articles 21 to 24 of this Law, and shall be calculated in DM.

#### Article 18

The value of the apartment shall consist of the construction value of the apartment, corrected by apartment's location coefficient. The construction value of an apartment shall be 600 DM per m<sup>2</sup>.

Apartment's location coefficient shall be established by the competent Cantonal Government within the range from 0.80 to 1.20 depending on the area of the settlement where the apartment is located, infrastructure support to the settlement, floor and other relevant facts.

#### Article 19

Upon the request of the purchaser, the value of the apartment shall be reduced by the amount of personal funds

invested or which need to be invested in the apartment by the purchaser, as follows:

- non-refunded funds he/she invested as his/her own share for the purpose of acquiring occupancy rights;
- the funds not paid in the name of compensation for dispossessed property to the holder of occupancy rights for the purpose of acquiring occupancy rights;
- funds with which the holder of occupancy rights removed war damage.

The amount of invested funds shall be defined on the basis of documentation or the estimate of the expert witness of civil engineering profession.

The amount of invested or needed funds from paragraph 1, line 3 of this Article shall be recognised to the purchaser in the amount not exceeding 30 % of the construction value.

#### Article 20.

The value of an apartment defined on the basis of Articles 18 and 19 of this Law shall be reduced on the basis of depreciation at the rate of 1 % per year, and not more than up to 60 %.

The price of garage shall be defined in the manner from paragraph 1 of this Article, provided that the purchaser does not have the right to reductions, and that he shall be obliged to pay the price of garage in full even in case when the apartment is paid by instalments.

#### Article 21

The purchaser shall be given a personal reduction of price of the apartment determined in accordance with Article 20 of this Law, in the amount of 1 % per full year of service with domestic legal or physical persons, including years of service with legal and physical persons from the area of SFRY until 06 April 1992.

Reduction based on years of service of spouses defined in paragraph 1 of this Article shall be calculated cumulatively and up to 75 %.

The beneficiary of family pension who is a purchaser, shall also be recognised a reduction of price of the apartment based on the years of service of the deceased holder of occupancy right.

#### Article 22.

The purchaser of an apartment shall be recognised a reduction of price of the apartment determined in accordance with Article 21 of this Law, as follows:

- 0.25 % for every month spent in the RBiH Army, Croat Council of Defence or Police (hereinafter: the Armed Forces) and in National - Liberation War from 1941 until 1945;
- 0.12% for every month spent under a working duty and in the unit of Civil Protection during the state of war.

#### Article 23

Purchasers of apartments who are war victims shall be entitled to a special reduction of the value of the apartment determined in accordance with Articles 19 to 22 of this Law, as follows:

1. Discount of 100% when the apartment is purchased by:
  - a. minor child as well as by the child receiving full time education both parents of whose were killed in the home guard-defensive war or were killed as victims of the aggression,
  - b. person who is military or civil invalid of war with at least 90% of physical damage.
2. Discount of 75% when the apartment is purchased by:
  - a. person whose two or more members of the family household were killed as members of the Federation Armed Forces in the defensive liberation war or were killed as victims of that aggression.
  - b. the holder of occupancy right whose spouse was killed in the home guard- defensive liberation war as a member of the Armed Forces or was killed as a victim in that aggression if he/she lives in a family household with a pre-school (a child or an adopted child) receiving full time education or with a child (an adopted child) who is the holder of the family property. In that case the apartment shall be jointly owned by the spouse and the child (adopted child).
3. Discount of 50% when the apartment is purchased by:
  - a. holder of occupancy right whose spouse was killed in home guard-defensive liberation war or was killed as a victim in that aggression,

- b. military invalid or a civil invalid of war with 60 % to 90 % of physical damage,
  - c. a parent whose child with who the parent lived in a family household was killed in the home guard-defensive, liberation war or was killed as a victim in that aggression.
4. Discount of 25 % when the apartment is purchased by:
- a. military or civil invalids of war with 20 % to 60 % of physical damage.
  - b. camp inmates and political prisoners who were in camps or prisons respectively during the aggression on Bosnia and Herzegovina for at least 12 months, which shall be proved by a credible documentation.

Military and civil war invalids of certain categories from this Article shall be considered persons to who that property is recognised on the basis of a separate law.

War invalids and other invalids who do not belong to the category of invalids defined in paragraphs I-4 of this Article shall be entitled to a discount in the amount of an appropriate category of invalidity from this Article deduced by 20%.

#### IV. FUNDS AND WAYS OF PAYING THE PRICE OF APARTMENT

##### Article 24

Payment of purchase price of the apartment shall be done by one of the means of payment, as follows:

- cash,
- certificates based on citizen's claims, regulated by special regulations.

In case of cash payment, the price of an apartment shall be reduced by 20% of the determined purchase price.

##### Article 25

Cash payment of the price of the apartment may be agreed to be in full or by instalments, according to the choice of purchaser. If the payment is agreed to be in full, the payment deadline may not be longer than 30 days from the day of entering into the contract.

##### Article 26

The deadline for payment by instalments may not exceed 25 years, and shall be paid in 25 equal annual instalments with 1% annual interest. The Cantonal Government may prescribe a shorter period for payment by instalments, with a smaller interest rate.

##### Article 26a

If a buyer, after a certain number of instalment payment of the apartment price, settles for cash payment, the price he pays is decreased for interest rate that is accounted at the rate of 2% a year on instalments paid in advance, from Article 26 of this Law, calculated according to the method of interest calculations for a consumption loan.

#### V. REGISTRATION OF APARTMENT OWNERSHIP RIGHTS

##### Article 27

The ownership right to an apartment shall be acquired upon the registration in the Land Register.

If the purchaser contracted the payment in instalments the right to register the ownership in the Land Register shall be acquired upon the day of the payment of the first instalment, provided that the apartment may not be sold or disposed of in legal transactions with living persons until the day of the payment of the last instalment.

If a real property is not registered in the Land Register, the ownership right to the apartment shall be acquired upon submission of the contract to the Land Registry Service of the Court in whose jurisdiction the apartment is located and upon the registration in the record of submitted contracts held in the Court.

The way of setting up and keeping the submitted contracts record shall be regulated by a separate cantonal regulation.

##### Article 28

When the apartment is used by the families of dead soldiers, disabled war veterans, demobilised soldiers and expelled persons on the basis of a legal title, the purchaser of the apartment may establish a lease relation with that person, under conditions prescribed by a separate law regulating the lease of apartments. The lease relation from

paragraph 1 of this Article may not last longer than 3 years.

#### Article 29

The seller shall be obliged to submit for approval the contract on the sale of the apartment to the competent Public Attorney within 30 days from the day of entering into the contract.

If the Public Attorney finds that the agreed price of the apartment was not determined in accordance with the provisions of this Law, he/she shall invite the parties to amend the contract and thus bring the apartment price into compliance with the provisions of this law within 30 days from the day of receipt of the contract.

If the parties fail to comply, the Public Attorney shall file an action for the cancellation of the contract within 60 days from the day of the submission of the contract.

#### Article 30

The contracting parties shall be obliged to certify their signatures. The body competent for the certification of signatures shall certify the signatures of the parties upon the finding that the contract was submitted for approval to the competent Attorney General, which is to be confirmed on the back of the contract.

#### Article 31

The contract on the sale of the apartment by instalment payments must contain the purchaser's statement authorising the registration of mortgage on the purchased apartment on behalf of the seller, in the amount of the price and interest.

#### Article 32

The mortgage shall become valid upon the registration in the Land Register.

In the area for which land records are not kept the mortgage shall become valid upon the registration in the Book of Title Deeds or other book in which the mortgage on real property is registered.

When the court receives the request for registration, i.e. the registration of apartment ownership, it shall register ex officio the mortgage on behalf of the seller in the full amount of the price and interest.

#### Article 33

Occupancy right of the apartment of the holder thereof shall terminate on the day of entering into the apartment sales contract.

#### Article 34

Contract on the sale of the apartment concluded under the conditions prescribed by this law shall not be subject to sales taxation.

### VI. THE MANNER OF DISTRIBUTION OF FUNDS

#### Article 35

Income realised from the sale of apartments referred to in Article 13 of this Law shall be included in the municipal budget.

#### Article 36

Income realised from the sale of apartments referred to in Article 15 of this Law shall be allocated as follows:

- 80% to the cantons
- 20% to the Federation.

#### Article 37

Income realised from the sale of apartments referred to in Article 12 of this Law shall be allocated as follows:

- 90% of income to the enterprise or other legal entity for the purpose of giving credits under favourable conditions for purchasing apartments for their workers. If the enterprise or other legal entity does not need crediting under favourable conditions for purchasing apartments for their workers, the income from the preceding paragraph may be used for its development.
- 10% of income to the enterprise or other legal entity for the payment of costs caused by the sale of apartments.

Income realised from the sale of apartments referred to in paragraph 1, line I, of this Article shall be used by the enterprise for the given purposes until the day of approval of the privatisation programme by the competent privatisation agency.

Once the privatisation programme is approved to the enterprise, further instalment payments collected from the sale of apartments referred to in paragraph 1, line 1, of this Article shall be paid into the budget of the municipality and the town on the territory of which the apartment is located and shall be used for the development of the communal infrastructure.

#### Article 38

Entities realising income from the sale of apartments in accordance with Articles 36, 37 and 38 of this Law, shall allocate 70% of income to the cantonal fund for construction of apartments for family members of killed soldiers, disabled war veterans, demobilised soldiers and expelled persons.

The rights and liabilities of the cantonal funds for building the apartments will be determined by separate cantonal regulations.

#### Article 39

When concluding a contract on the sale of apartments under provisions of this Law, an occupancy right holder who concluded a contract on the purchase of the apartment on the basis of the Law on Security in JNA and the Law on Amendments to the Law on Rights and Obligations of the Federal Bodies Regarding Socially Owned Assets Used by Them (Official Gazette of the SFRY, No 84/90) shall be recognised the amount paid, calculated in DEM at the exchange rates valid on the day of the payment.

#### Article 39a

If the occupancy right holder of an apartment at the disposal of the Federation Ministry of Defence uses the apartment legally and s/he entered into a legally binding contract on purchase of the apartment with the SSNO before 6 April 1992 in accordance with the Law referred to in Article 39 of this Law, the Federation Ministry of Defence shall issue an order for the registration of the occupancy right holder as the owner of the apartment with the responsible court.

#### Article 39b

In the event that the occupancy right holder referred to in Article 39a of this Law did not effect the payment of the total amount of the sale price of the apartment in accordance with the sale contract, s/he shall pay the reminder of the amount specified in that contract to the Ministry of Defence of the Federation.

If the contract provided for the payment of the sale price in instalments, an annex to the contract shall be made regulating the payment of the remaining instalments and the creation and registration of a mortgage in accordance with this Law.

The provisions of Articles 39a of this Law and paragraph 1 and 2 of this Article shall also be applied to contracts on the purchase of apartments concluded before 6 April 1992, in cases where the verification of signatures has not been done before the responsible court.

#### Article 39c

The provisions of Articles 39a and 39b shall also be applicable to an occupancy right holder who has exercised the right to repossess the apartment pursuant to the provisions of the Law on the Cessation of Application of the Law on Abandoned Apartments ("Official Gazette of the FbiH", 11/98 and 18/99).

#### Article 39d

Person who does not realise his/her right under this Law with the Federation Ministry of Defence, may initiate a proceedings before the responsible court.

#### Article 39e

The occupancy right holder who is not entitled to the repossession of the apartment or does not submit a claim for the repossession of the apartment in accordance with the provisions of Article 3 and 3a of the Law on the Cessation of Application of the Law on Abandoned Apartments and who entered into a legally binding contract on the purchase of apartment with the SSNO before 6 April 1992, shall have the right to submit a request to the Federation Ministry of Defence for compensation of the funds paid on that basis, unless it is proved that these funds were acknowledged for purchase of an apartment outside the territory of Bosnia and Herzegovina.

## VII. SPECIAL PROVISIONS

#### Article 40

Legal status of apartments which are under construction and the manner of their privatisation shall be regulated by a special regulation to be passed by the competent Cantonal body.

For the purposes of this Law, the apartment under construction shall be understood to mean every newly built apartment on which a technical inspection has not been done and a positive statement on use of the apartment has not been given.

When passing this regulation, the competent Cantonal body shall consider the rights of an investor (contractor), level of construction, as well as other circumstances relevant for a fair solution.

#### Article 41

Upon a request of the seller or the purchaser, the responsible body which keeps the records on apartments shall be obliged to provide access to data relevant for the sale of the apartment.

#### Article 42

Maintenance of common parts of the building in which the apartments have been sold, as well as renting of the apartments for which the holders of the occupancy right have not submitted a request for sale, shall be regulated by a special Cantonal regulation.

### VIII. PENALTY PROVISIONS

#### Article 43

Legal entity - the seller of the apartment shall be fined for an offence by the amount from 1.000 KM to 10.000 KM :

1. if s/he does not act in accordance with the provision of Article 7 of this Law;
2. if s/he acts opposite to the provisions of Article 8a of this Law;
3. if he determines the price of the apartment in contravention of the provisions of Article 18 to 25 of this Law;
4. if he does not act in accordance with the provision of Article 29, paragraph 1 of this Law;
5. if he uses means acquired by sale of apartments for purposes which are opposite to provisions of Articles 35 to 38 of this Law. A responsible person within legal entity shall be fined for the offence referred to in paragraph 1 of this Article, by the amount from 500 KM to 1.000 KM.

#### Article 44

A responsible person within the competent body which keeps the record on apartments shall be formed for an offence by the amount from 500 KM to 1.000 KM if he does not act in accordance with provisions of Article 41 of this Law.

#### Article 45

Until the KM becomes operational, the fines foreseen in Articles 43 and 44 of this Law may be paid in DM or the same amount denominated in other currencies used in payment operations in the Federation of Bosnia and Herzegovina, at the average rate published by the competent financial institution on the date of payment.

### IX. FINAL AND INTERIM PROVISIONS

#### Article 46

Contracts on the use of apartment which were concluded under the Law on Housing Relations by the day of the entry into force of this Law, shall cease to be valid at latest within three years from the date of the entry into force of this Law.

Persons who acquired the occupancy right or the legal title to lawfully occupy the apartment in accordance with provisions of the Law on Housing Relations, by the expiry of the deadline referred to in Article 50 of this Law, shall have the right to purchase the apartment in accordance with the provisions of this Law.

#### Article 47

Provisions of this Law shall not be applied to the sale of privately owned apartments which have not been subject to nationalisation, on which the occupancy right has been acquired. Sale of apartments which are subject to restitution shall be regulated by a separate regulation on restitution.

#### Article 48

The residential building and apartments in the building which have been damaged during the war can not be subject to sale, if they do not provide permanent fitness, usability and safety of all basic parts of the building as a whole which are being used by all users of the building.

After having concluded the required procedure, the fitness of the building referred to in paragraph 1 of this Article, shall be determined by the administrative municipal body responsible for urban planning and civil engineering affairs.

#### Article 49

Cantonal Governments shall pass regulations referred to in Articles 18, 26 and 27 of this Law within 15 days from the date of the entry into force of this Law.

#### Article 50

Cantonal Assemblies shall pass regulations referred to in Articles 40 and 42 of this Law within two years from the date of the entry into force of this Law.

#### Article 51

This Law shall enter into force on the eight day of its publishing in the “Official Gazette of the Federation of Bosnia and Herzegovina” and shall be applied upon the expiration of 90 days after its entry into force.





## National Housing Rights Legislation



### Bosnia and Herzegovina

Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens (3 April 1998) (Bosnia and Herzegovina) <sup>(55)</sup>

#### I. GENERAL PROVISIONS

##### Article 1

From the day of the entry into force of this law, the Law on Temporary Abandoned Real Property Owned by Citizens (Official Gazette RBiH 11/93, 13/94 - hereinafter: the Law) and regulations regulating the issue of temporary abandoned property owned by citizens in the period between 30 April 1991 and the entry into force of this law, shall cease to be applied on the territory of the Federation of Bosnia and Herzegovina (hereinafter: the Federation).

##### Article 2

From the day of the entry into force of this Law, the bodies and authorities of the Federation and other bodies in the Federation ( hereinafter: the competent authorities) shall refrain from undertaking any new actions by which real property owned by citizens is declared abandoned or placed under municipal administration.

##### Article 3

Real property declared abandoned and placed under municipal administration on the basis of the Law on Temporary Abandoned Real Property Owned by Citizens shall remain under municipal administration until the return of the real property to the owner pursuant to the provisions of this Law.

##### Article 4

Owner of the real property declared abandoned shall have the right to file a claim for the return of the real property at any time.

##### Article 5

For the purpose of this Law, the owner shall be understood to mean a person which, according to the legislation in force, was the owner of the real property at the moment when that property was declared abandoned.

The owner of the real property may authorize another person to submit the claim for the return of the real property.

##### Article 6

The user to whom the real property has been allocated for temporary use on the basis of the Law on Temporary Abandoned Real Property (hereinafter: the temporary user), shall continue to use the real property under the conditions and in the manner which were prescribed by the Law on Temporary Abandoned Real Property, until the issuance of a decision under Article 12 of this Law.

##### Article 7

If a temporary user who has been ordered to vacate the property pursuant to the provisions of this Law has no possibility to return to the apartment in which he was living until 30 April 1991 and no other housing unit satisfying the requirements of emergency or appropriate accommodation has been provided to him/her, the competent service of the municipality on the territory of which s/he enjoyed the latest domicile or residence shall, within the deadline set by the decision for his/her vacation of the property, provide him/her with an emergency accommodation or an appropriate accommodation if, pursuant to Article 8(4) of the Law on Housing Relations, this person cannot be lodged in an emergency accommodation.

The authorities responsible to provide an emergency accommodation shall not be obliged to provide either an emergency or appropriate accommodation to persons occupying the property without a valid legal title.

In no event shall the failure of the municipality to meet its obligations under Paragraph 1 of this Article operate to delay the ability of the owner to reclaim his property.

##### Article 8

For the purposes of this Law, an emergency accommodation shall be understood to mean the emergency accommodation pursuant to Article 8 of the Law on Housing Relations (Official Gazette of SR BiH 4/84, 12/86, 36/89).

## Article 9

Parties in proceedings instituted at the owner's request for repossession of the real property shall be the owner of the real property and the temporary occupant at the time the request was submitted.

## II. RETURN OF REAL PROPERTY TO THE OWNER

### Article 10

The owner of private property has the right to claim at any time from the competent authorities the repossession of his/her property which has been declared abandoned or allocated for temporary use.

### Article 11

A claim for repossession of a property under Article 10 of this Law shall be filed by the owner to the competent municipal, city or cantonal administrative body competent for property - law affairs.

The claim shall be submitted in writing, signed by the owner or orally, in person by the owner or an authorized representative. A claim should include:

1. all necessary information on the property;
2. any evidence in possession of the claimant that the claimant is the owner;
3. the date when the owner intends to reoccupy the property.

The claim for repossession of property referred to in Paragraph 1 of this Article shall not be subject to the statute of limitations.

### Article 12

Upon the receipt of the owner's claim for the return of the property, the competent body shall issue a decision on the return of the property to the owner within a period of 30 days from the date of the receipt of the claim.

The decision referred to in paragraph 1 of this Article by which the owner's claim is accepted shall contain:

1. a decision terminating the municipal administration of the property as of the date of the intended return;
2. a decision on repossession of the property by the owner;
3. a decision terminating the right of the temporary user to use the property as of the date of the intended return of the owner;
4. a time limit for vacating the property by the temporary user or the person using the property without a valid legal title, or the time limit for returning the land;
5. a decision whether the temporary user is entitled to emergency accommodation.

The deadline for vacating the property, referred to in Paragraph 2(4) of this Article may not be shorter than 90 days from the date of the issuance of the decision, nor longer than the day of intended return of the owner and the day of intended return may not be earlier than 90 days from the date of submitting the claim for return of the property.

In exceptional circumstances, the deadline referred to in Paragraph 3 of this Article may be extended to up to one year if the municipality responsible for providing alternative accommodation in accordance with Article 7(1) of this Law provides detailed documentation regarding its efforts to secure alternative accommodation to the Federation Ministry of Urban Planning and Environment, and upon a finding by the Ministry that there exists a documented absence of available housing in the municipality.

In case of the return of arable land, the time limit referred to in Paragraph 2 (4) of this Article may be extended until the harvest is completed.

### Article 13

The competent authority must notify the owner of the property and the temporary user of the property.

Any appeal against the decision must be submitted to the cantonal administrative body competent for the property law affairs within 15 days from the date of receipt of the decision.

An appeal shall not suspend the execution of the decision.

### Article 14

A party affected by a decision made under Article 12 may at any time file a claim to the Commission for Real Property Claims of Displaced Persons and Refugees (GFAP, Annex 7 hereinafter the Property Commission).

In the event that a proceeding from Paragraph 1 of this Article is initiated, all other proceedings before the competent authorities, including the enforcement of decision referred to in Article 12 of this Law, shall be stayed pending the final decision of the Property Commission.

A decision of the Property Commission is final and binding.

Regarding the rights and obligations of a party referred to in Paragraph 1. of this Article, the decision of the Property Commission shall have the same legal force as a decision of any other competent authority made in accordance with this Law.

#### Article 15

The return of the property to the owner shall be witnessed by an official of the competent office of the municipality referred to in Article 11, paragraph 1 of this Law.

The return of the property and the entering into possession by the owner shall be recorded in the minutes including, among other things, a detailed description of the current state of the premises and the movable property therein.

#### Article 16

If the person occupying the property fails to voluntarily comply with the decision ordering him/her to vacate the property the competent authority shall employ compulsory enforcement, in accordance with the law.

The enforcement shall be carried out at the request of the owner.

#### Article 17

The proceedings for the repossession of real property by the owner as determined in this law and proceedings of the compulsory enforcement referred to in Article 16 of this law shall be carried out in accordance with the Law on General Administrative Procedure(Official Gazette 2/92 and 13/94) which is applicable in the territory of the Federation until the competent authorities decide otherwise, based on Article IX.5 (1) of the Federation Constitution.

#### Article 18

This law shall enter into force on the day following its publication in the “Official Gazette” of the Federation of Bosnia and Herzegovina.



## National Housing Rights Legislation



### Brazil Constitution (1988)

#### Article 7

The following are rights of both urban and rural workers, in addition to other rights directed toward improving their lot in society:

- (IV) A minimum wage established by law and unified on a nationwide basis; such wages to be capable of meeting the basic necessities of life of the worker and his family, in terms of housing, food, education, health care, leisure, clothing, hygiene, transportation, and social security; it shall be subject to periodic readjustments that preserve its purchasing power and may not be used as a reference value for any purpose.

#### Article 21

It shall be the competence of the Federal Government to:

- (XX) establish guidelines for urban development, housing, infrastructure and transport.

#### Article 23

The Union, the States, the Federal District and the Municipalities have a mutual responsibility to:

- (IX) promote housing construction programmes and the improvement of living and basic sanitation conditions.

#### Article 182

The urban development policy, applied by the Municipal government, in conformity with the law, has the objective to order the complete development of the social functions of the city and to provide for the welfare of its inhabitants.

...

#### Article 183

An individual who possesses an urban area <sup>(a)</sup> of up to 250,000 square metres, for a continuous period of at least five (5) years, without claim for housing will be able to have domain over it unless he/she has another urban or rural property.

- (1) The registration of domain and the right to use will be given to a man or woman, or both, regardless of their civil status.
- (2) This right will not be given to the same individual more than once.

#### Article 187

Agricultural policy shall be planned and implemented pursuant to law, with regular participation in that process by the production sector — involving both rural producers and workers — as well as by the marketing, warehousing and transportation sectors, considering the following in particular:

- (VIII) Housing for the rural worker.

#### Article 200

The unitary health system has authority to perform the following functions, in addition to any other prerogatives, pursuant to law:

- (IV) Participate in formulating policy and implementing actions in the area of basic sanitation services.

#### Article 203

Social assistance shall be furnished to whomever may need it, regardless of whether they have contributed to social security. The objectives of this service are as follows:

- (II) Shelter for needy children and adolescents.



## National Housing Rights Legislation



### Brazil

#### Statute of the City, Law No. 10-257 (June 2001)

[City Statute, establishes norms for public order and social interest which regulate the use of urban property in favour of the common good, safety and well-being of citizens, as well as environmental equilibrium.]

#### Article 2

The purpose of urban policy is to give order to the full development of the social functions of the city and of urban property, through the following general guidelines:

- I - guarantee the right to sustainable cities, understood as the right to urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, to work and leisure for current and future generations; ...
- XV - simplification of the legislation concerning subdivisions, land use, occupation and building regulations, in order to permit a reduction in costs and increase in the supply of lots and housing units;

#### Article 3

It is the responsibility of the Federal Government, in addition to its other attributions related to urban policy: ...

- IV - institute guidelines for urban development, including housing, basic sanitation, and urban transportation;

#### Article 3

It is the responsibility of the Federal Government, in addition to its other attributions related to urban policy:

- III - promote, through its own initiative and in conjunction with the States, the Federal District and the municipalities, housing construction programs and the improvement of housing conditions and basic sanitation;

#### Section V: Special usucapion rights for urban property

#### Article 9

Someone who has possession of an urban area or building of up to two hundred and fifty square meters, for five years, uninterruptedly and without contestation, who uses it for their residence or that of their family, can establish their dominion, as long as they are not the owner of any other urban or real estate.

- § 1<sup>o</sup> The title of dominion will be conferred to the man or woman, or both, whether or not they are married or single.
- § 2<sup>o</sup> The rights granted in this article will not be recognized to the same possessor more than once.
- § 3<sup>o</sup> For the purposes of this article, the legitimate heir, continues to have full rights to the possession of their predecessor as long as they reside in the property at the time it was left open to succession.

#### Article 10

Urban areas with more than two hundred and fifty square meters, occupied by the low income population for their housing, for five years, uninterruptedly and without opposition, where it is not possible to identify the land occupied by each possessor, are susceptible to collective usucapions, as long as the possessors are not owners of other urban or rural property.

- § 1<sup>o</sup> The owner can, in order to count the time period required by this article, add to his possession that of his predecessor, as long as the contact is continuous for both.
- § 2<sup>o</sup> The special collective usucapion of urban real estate will be declared by the judge, through a sentence, which will serve as title to register in the real estate deeds office.
- § 3<sup>o</sup> In the sentence, the judge will attribute an equal ideal portion of the land to each possessor, independently of the size of the land that each occupies, except in the case of a written agreement among the condominiums, establishing differentiated ideal portions.

§ 4. The special condominium constituted is indivisible and cannot be terminated except by favorable determination made by at least two thirds of the members of the condominium, in the case of the execution of urbanization after the constitution of the condominium.

§ 5. The determinations related to the administration of the special condominium will be taken by a majority of votes of the condominium members present, requiring the others to comply with the decision, whether or not they agree or were absent.

#### Article 11

While the special urban action for usucapion is pending, any other actions, petitions, or possessions that come to be proposed relative to the real estate subject to usucapion will be stayed,

#### Article 12

Legitimate parties for the proposal of an action for special urban usucapion include:

I - the possessor, in isolation, in group or supervenient;

II - the possessors, in a state of co-possession;

III - as a processual substitute, an association of community residents, duly established, with legal standing, as long as it is explicitly authorized by those it represents.

§ 1. In the action of special urban usucapion, intervention by the Attorney General is required.

§ 2. The author should have all the benefits of the courts and of free legal assistance, as well as in the real estate deeds office.

#### Article 13

Special usucapion for urban real estate can be invoked as a matter of defense, with the sentence that recognizes it considered valid title to be registered in the real estate deeds office.

#### Article 14

In the legal action of special urban real estate usucapion, the processual writ to be observed is a summary action.



## National Housing Rights Legislation



### Brazil

Statute of the City, Provisional Measure No. 2.220 (4 September 2001)

#### CHAPTER I: OF THE SPECIAL USE CONCESSION

##### Article 1

Whomever, until June 30, 2001, possesses as his or her own, for five years, without interruption and without opposition, up to two hundred and fifty square meters of public real estate located in an urban area, using it for their own residence or that of their family, has the right to concession of special use for housing purposes in relation to the property that is the object of said possession, as long as he is not the owner or concessionaire, in any form, of any other urban or rural real estate.

- § 1º The concession for special use for housing purposes will be conferred free of charge to the man or woman, or both, independent of their marital status.
- § 2º The right established by this article shall not be recognized to the same concessionaire more than once.
- § 3º For the purposes of this article the legitimate heir, can continue, with complete rights, on the possession of his or her predecessor, as long as he or she resided in the property since the time of the opening of the succession.

##### Article 2

In the properties indicated in art. 1o, with more than 250 square meters, which, until June 30, 2001, were occupied by a low income population for housing purposes, for five years, uninterruptedly and without opposition, where it was not possible to identify the land occupied by each possessor, the special use concession for housing purposes will be conferred in a collective form, as long as the possessors are not property owners or concessionaires, in any way, of other urban or rural property.

- § 1º The possessor can, in order to calculate the period required by this article, add to their possession that of their predecessor, as long the contact was continuous to both.
- § 2º In the special use concession established by this article, an equal ideal fraction of land will be attributed to each possessor, independently of the size of the land that each occupies, unless there is a written accord among the occupants, establishing distinct ideal fractions.
- § 3º The ideal fraction attributed to each possessor cannot be superior to two hundred and fifty square meters.

##### Article 3

The option to exercise the rights established in arts. 1o and 2o will also be guaranteed to the occupants, regularly inscribed, in public real estate, of up to two hundred and fifty square meters, of the Federal government, the States, the Federal District and the municipalities, which are located in an urban area, as determined by the regulation.

##### Article 4

In a case where the occupation involves a risk to the lives or to the health of the occupants, the government will guarantee the possessor the exercise of the right established by arts. 1o and 2o in another location.

##### Article 5

The Government is responsible for assuring the exercise of the rights established in arts. 1o and 2o in another location in the case of occupation of the real estate:

- I - for common use of the people;
- II - destined for an urbanization project;
- III - of interest for national defense, environmental preservation and protection of natural ecosystems;
- IV - reserved for construction of reservoirs and related works; or
- V - located in a communication route.

##### Article 6

The title for special use concession for housing purposes will be obtained by the administrative route through the competent Public Administrative organ, or, in case of its refusal or omission, by judicial decree.

- § 1. The Public Administration will have a maximum period of 12 months to determine the request, counting from the date it is received.
- § 2. In the case of a real estate property of the federal government or the states, the interested party must instruct the requirement for special use concession for housing purposes with a certificate issued by the municipal government, which attests that the real estate is located in an urban area and is destined for the housing of the occupant or his or her family.
- § 3. In case of legal action, the special use concession for housing purposes will be declared by a judge, through a sentence.
- § 4. The title issued by administrative procedure or judicial sentence will serve for the purpose of the registration in the real estate deeds office.

#### Article 7

The right to special use concession for housing purposes is transferable inter vivos or because of death.

#### Article 8

The right to special use concession for housing purposes is extinguished in the case:

- I - the concessionaire uses the real estate for a purpose other than for housing for themselves or for their family; or
- II - the concessionaire acquires the property or the use concession of another urban or rural real estate.  
Sole paragraph. The termination indicated in this article will be recorded in the real estate deed office, by means of a declaration of the issuing public authority.

#### Article 9

It is the responsibility of the competent public authority to authorize the use to whom, until June 30, 2001, possesses as his own, for five years uninterruptedly and without opposition, up to two hundred and fifty square meters of public real estate located in an urban area, using it for commercial purposes.

- § 1. The authorization for use determined by this article is conferred free of charge.
- § 2. The possessor can, for the purpose of counting the period required by this article, add to his possession that of his predecessor, as long as the contact is continuous for both.
- § 3. The authorization for use called for in the caput of this article, is subject to the dispositions of arts. 4o and 5o of this Provisional Measure.





## National Housing Rights Legislation



### **Bulgaria**

Constitution (1991, as amended 2003 and 2005)

#### Article 17

- (1) The right to property and inheritance shall be guaranteed and protected by law.
- (2) Property shall be private and public.
- (3) Private property shall be inviolable.
- (4) The regime applying to the different units of state and municipal property shall be established by law.
- (5) Forcible expropriation of property in the name of state or municipal needs shall be effected only by virtue of a law, provided that these needs cannot be otherwise met, and after fair compensation has been ensured in advance.

#### Article 33

- (1) The home shall be inviolable. No one shall enter or stay inside a home without its occupant's consent, except in the cases expressly stipulated by law.
- (2) Entry or stay inside a home without the consent of its occupant or without the judicial authorities' permission shall be allowed only for the purposes of preventing an immediately impending crime or a crime in progress, for the capture of a criminal, or in extreme necessity.



## National Housing Rights Legislation



### **Bulgaria**

#### Restitution of Ownership of Nationalised Real Property Act of 1992

[Owners reinstated under the Restitution of Ownership of Nationalised Real Property Act (promulgated, SG No. 15/1992; amended, No. 28/1992) may claim their property right before the authority under Article 3 of the Transformation and Privatisation of State-Owned and Municipal Enterprises Act. However, such owners must make such a claim not later than two months after the publication of the decision to privatise the enterprise whereof their property is part, otherwise they shall only have the right to compensation.]



## National Housing Rights Legislation



### **Burkina Faso** Constitution (1991)

#### Article 18

Education, instruction, formation, employment, social security, sport, housing, leisure, health, protection of motherhood and of infancy, assistance to the aged or handicapped persons and in social cases, artistic and scientific creation shall constitute the social and cultural rights recognized by the present Constitution which aims to promote them.



## National Housing Rights Legislation



### **Cambodia** Constitution (1993)

#### Article 31

The Kingdom of Cambodia shall recognise and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, and the Covenants and Conventions related to human rights, women's and children's rights.

#### Article 63

The State shall pay attention to market management and to helping ensure appropriate living conditions for people.

[\(63\)](#)



## National Housing Rights Legislation



### Cameroon

Decree No. 77/140 (1977)

[Establishes the Cameroon Housing Loan Company: this organization provides financial support for any project designed to promote housing. For this purpose, it is authorized: (a) To finance the provision of services to land earmarked for the construction of low-income housing; (b) To seek and invest the funds required for property and development companies, as well as for the implementation of any low-income housing programme which falls under the objectives of the plan and meets certain specifications; (c) To accept the savings of natural or legal persons for the purpose of facilitating property ownership. To that end the Crédit Foncier may, by means of endorsements, guarantees or discounts, grant medium-term and long-term loans.] [\[1\]](#)



## National Housing Rights Legislation



### Cameroon

Order No. 79/PM (1981)

[Lays down procedures for allocating plots on estates for those within low incomes. Under this Order, persons fulfilling the following conditions may apply for a serviced plot within such an estate: They must not possess any immovable property in the town where the estate is located at the time of acquisition of the plot; They must undertake to occupy the dwelling thus constructed themselves; They must have a monthly income which does not exceed the ceiling laid down in the applicable regulations and which entitles them to a housing loan.] <sup>(54)</sup>



## National Housing Rights Legislation



### Canada

#### Canada Mortgage and Housing Corporation Act

##### Article 17.

Subject to section 33 of this Act and to subsection 75(2) and section 100 of the National Housing Act, the Corporation shall, on behalf of Her Majesty, and in the place of the Minister, have, exercise and perform all rights, powers, duties, liabilities and functions of the Minister under the Housing Acts or under any contract entered into under those Acts, except the authority of the Minister under those Acts to pay moneys out of the Consolidated Revenue Fund.

##### Article 18.

Wherever in any contract, agreement, guarantee or mortgage made or entered into under The Dominion Housing Act, 1935, The Home Improvement Loans Guarantee Act, 1937, The National Housing Act, 1938, or under The National Housing Act, 1944 prior to January 1, 1946, it is provided that any right, power, duty, liability or function is vested in or to be exercised or performed by the Minister of Finance or by any officer of the Department of Finance or by any person acting on behalf of the Minister of Finance, that right, power, duty, liability or functions shall be vested in and exercise or performed by the Corporation.



## National Housing Rights Legislation



### Canada Canadian Human Rights Act

#### Sec. 5.

It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public

- (a) To deny, or to deny access to, any such goods, service, facility or accommodation to any individual, or
- (b) To differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

#### Sec. 6.

It is a discriminatory practice in the provision of commercial premises or residential accommodation:

- (a) To deny occupancy of such premises or accommodation to any individual, or
- (b) To differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

#### Sec 13.

(1) It is a discriminatory practice:

- (a) In the provision of goods, services, facilities or accommodation customarily available to the general public,
- (b) In the provision of commercial premises or residential accommodation, or
- (c) In matters related to employment,

To harass an individual on a prohibited ground of discrimination.

#### Sec 15.

- (1) It is not a discriminatory practice for a person to adopt or carry out a special program, plan or arrangement designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be or are based on or related to the race, national or ethnic origin, colour, religion, age, sex, marital status, or disability of members of that group, by improving opportunities respecting goods, services facilities, accommodation or employment in relation to that group.





## National Housing Rights Legislation



### Canada

Human Rights Code (1981)

Statutes of Ontario (1981, chap. 53), as amended in 1984, Chapter 58, s. 39 and 1986, Chapter 64, s. 18

#### Section 2.

- (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status, handicap or the receipt of public assistance.
- (2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, marital status, same-sex partnership status, family status, handicap or the receipt of public assistance.

#### Section 3a

- (1) Every sixteen or seventeen year old person who has withdrawn from parental control has a right to equal treatment with respect to occupancy of and contracting for accommodation without discrimination because the person is less than eighteen years old.

#### Section 6.

- (1) Every person who occupies accommodation has a right to freedom from harassment because of sex by the landlord or agent of the landlord or by an occupant of the same building.



## National Housing Rights Legislation



### Canada Housing Development Act

#### Article 4.

The Minister may:

- (a) make grants in aid of studies into housing conditions or any matter relating to housing in Ontario; and
- (b) make grants and otherwise assist the housing building industry in Ontario by stimulating and encouraging research, education and constructive competition within the industry.

#### Article 7.

- (1) The Crown in right of Ontario represented by the Minister may make agreements with the Crown in right of Canada represented by the Minister of Government Services or such other Minister as may be authorized in that behalf respecting joint projects as contemplated in section 40 of the National Housing Act (Canada) for:
  - (a) the acquisition and development of land for housing purposes;
  - (b) the construction of housing projects for sale or for rent; and
  - (c) the acquisition, improvement and conversion for housing purposes of existing buildings situated in any municipality.
- (2) The Lieutenant Governor in Council may constitute corporations with such powers and duties as are considered expedient to carry out any of the terms of any agreement made under subsection (1), or to carry out any building development or housing project, including power to plan, construct and manage any building development or any housing project undertaken under such agreement or otherwise, and including power to acquire and dispose of land in their own name.
- (3) Any money required to be furnished by the Crown in right of Ontario under any agreement made under subsection (1) shall be paid out of the money appropriated therefor by the Legislature.
- (4) Any money required by the Crown in right of Ontario for the purposes of any corporation constituted under subsection (2) for purposes other than to carry out the terms of an agreement made under subsection (1) shall be paid out of the money appropriated therefor by the Legislature.
- (5) Despite any other Act, the council of a municipality that enters into or has heretofore entered into an agreement with Her Majesty the Queen in right of Ontario, or with Her Majesty the Queen in right of Ontario and Central Mortgage and Housing Corporation, a corporation established by The Central Mortgage and Housing Corporation Act (Canada) pursuant to The Housing Development Act, 1948 or this Act or predecessor of this Act shall be deemed to have and to have had authority to enter into such agreement and shall have all such powers as may be necessary to carry out the provisions thereof or of any undertaking given by such council pursuant thereto, and, without limiting the generality of the foregoing, such council may incur continuing obligations and make provisions for the discharge thereof and may contribute money to and expend money on joint housing projects and raise money therefor by the issue of debentures, all without the assent of the electors and without reference to the Ontario Municipal Board, and such council may apportion any debt or obligation arising out of such agreement in such manner as it considers equitable against any properties, whether such properties form part of a project within the meaning of such agreement or are adjacent thereto, and such debt or obligation when so apportioned shall be deemed to be a land tax within the meaning of the Municipal Act and recoverable as such.

#### Article 16.

In sections 17 and 18, “housing project” means a project designed to provide housing accommodation or to facilitate in any way the provision of housing accommodation, with or without any public space recreational facilities and commercial space or buildings appropriate thereto.

#### Article 17.

If there is an official plan in effect in a municipality that includes provisions relating to the provision of housing, which provisions have been approved by the Minister subsequent to the coming into force of this section, or if the council of a municipality has adopted a policy statement containing provisions relating to the provision of housing

which statement has been approved by the Minister, the council of the municipality may:

- (a) acquire and hold land, with or without buildings thereon, within the municipality for the purpose of a housing project;
- (b) survey, clear, grade, subdivide, service and otherwise prepare such land for the purpose of the project; and
- (c) sell, lease or otherwise dispose of such land for a nominal or other consideration for housing purposes.

**Article 19.**

To relieve any emergency in housing conditions, a municipality, with the approval of the Minister, may erect, maintain, manage and wind up projects for temporary housing accommodation either in or outside the municipality.



## National Housing Rights Legislation



### Canada

#### National Housing Act (Chapter N-11)

An Act to promote the construction of new houses, the repair and modernization of existing houses, and the improvement of housing and living conditions.

#### Article 73.

It is the responsibility of the Corporation to cause investigations to be made into housing conditions and the adequacy of existing housing accommodation in Canada or in any part of Canada and to cause steps to be taken for the distribution of information leading to the construction or provision of more adequate and improved housing accommodation and the understanding and adoption of community plans in Canada.



## National Housing Rights Legislation



**Canada**

Ontario Housing Corporation Act

### Article 6.

- (1) The Corporation, with the approval of the Lieutenant Governor in Council, may make any loan, grant, guarantee or advance that may be made by the Lieutenant Governor in Council or the Minister under sections 2 and 4 of the Housing Development Act.



## National Housing Rights Legislation



### Cape Verde Constitution (1992)

#### Article 10 (International Relations)

1. The State of Cape Verde shall be guided in international relations by the principles of national independence, the respect for International Law and Human Rights, the equality amongst States, the non-intervention in the internal affairs of other States, the reciprocity of advantages, the cooperation with all other peoples and peaceful coexistence.

#### Article 66 (Right to private property)

1. Everyone shall have the right to private property, as well as its transfer in life or as a result of death, in accordance with the Constitution and the law.
2. The right to inheritance shall be guaranteed.
3. The requisition or expropriation for public reasons shall only take place in accordance with the law and always against the payment of a just compensation.

#### Article 69 (Dwelling)

Everyone shall have the right to a dwelling which should have a minimum of dignity and, for this purpose, the State shall undertake to promote, gradually and in conformity with the national economic development, the creation of the appropriate institutional, legal and infrastructural conditions, foment and support the initiatives of the local communities and of the population and stimulate private housing development and the access to privately owned housing.



## National Housing Rights Legislation



**China**  
Constitution (1982)

### Article 26(1)

... The State shall protect and improve the living environment and the ecological environment, and prevent and remedy pollution and other public hazards.



## National Housing Rights Legislation



### Colombia Constitution (1991)

#### Article 51

All Colombian citizens are entitled to live in dignity. The State will determine the conditions necessary to give effect to this right and will promote plans for public housing, appropriate systems of long-term financing, and community plans for the execution of these housing programmes.

#### Article 64

It is the duty of the State to promote the gradual access of agricultural workers to landed property in individual or associational form and to services involving education, health, housing, social security, recreation, credit, communications, the marketing of products, technical and management assistance with the purpose of improving the incomes and quality of life of the peasants.

#### Article 366

The general welfare and improvement of the population's quality of life are social purposes of the State. A basic objective of the State's activity will be to address unsatisfied public health, educational, environmental, and potable water needs. For this purpose, public social expenditures will have priority over any other allocation in the plans and budgets of the nation and the territorial entities.

#### Article 367

Home public services shall be provided directly by each municipality when the technical and economic characteristics of the service and the general benefits permit it and make it advisable and the departments shall carry out support and coordination functions.





## National Housing Rights Legislation



**Colombia**

Act No. 56 of 1985

### Article 1.

[Article 1 recognizes the right to housing of the Colombian family as an obligation of the State, a right which is necessary for the life and economic development of the community and responds to the need to harmonize the exercise of the right of ownership and its use with the public interest. Article 2 provides that a contract for rented urban accommodation is one by which two parties enter into reciprocal obligations, on the one hand to grant the total or partial enjoyment of an urban building intended for housing, and on the other to pay a specified price for such enjoyment.] <sup>(6)</sup>

### Article 24.

When eviction proceedings are initiated, as provided for under article 434 of the Code of Civil Procedure, in addition to the requirements noted therein, the following shall be taken into account:

- (i) When the defendant cannot be notified in person of the court order accepting the application within two (2) days from the date of its issue, a notice to that effect shall be posted in the entrance of the building;
- (ii) The preliminary pleas referred to in article 97 of the Code of Civil Procedure for this kind of eviction proceedings must be entered within the time-limit set for service of process;
- (iii) In the cases referred to in articles 434, sec. 10.337 and 338 of the Code of Civil Procedure, both parties shall furnish security for costs within five (5) days of the date of proceedings, equivalent to two (2) rental fees, guaranteeing compensation for any prejudice caused.



## National Housing Rights Legislation



**Colombia**

Act No. 7 of 1978 for the Protection of Children

### Article 7.

Every child has a right to medical care, to access to culture and sport, and to live in the home of a family. A sick child has the right to rehabilitation and to be among the first to receive assistance in the event of a disaster.



## National Housing Rights Legislation



### Colombia

#### Decree 2154 (1993)

[Decree 2154 deals with the case of legal entitlement as one of the solutions to the problem of housing for which the family housing allowance can be granted. According to article 19, legal entitlement is the set of measures whereby a person able to benefit from such a solution may be granted ownership of the property in question and register it in the property register of the locality as appropriate, in accordance with the provision contained in chapter IV of Act 3a of 1991.] [\[13\]](#)



## National Housing Rights Legislation



**Costa Rica**  
Constitution (1949)

### Article 65

The State shall promote the construction of low-cost housing and create a family homestead for workers.



## National Housing Rights Legislation



**Cuba**  
Constitution (1976)

### Article 42

The State sanctions the right won by the Revolution that all citizens, regardless of race, colour or national origin shall: ... Live in any sector, zone or district and stay in any hotel.



## National Housing Rights Legislation



**Cuba**  
Constitution (1992)

### Article 56

The home is inviolable. Nobody can enter the home of another against his will, except in those cases foreseen by law.



## National Housing Rights Legislation



### **Czech Republic** Constitution (1993)

#### Article 10 [Human Rights Treaties]

Ratified and promulgated international accords on human rights and fundamental freedoms, to which the Czech Republic has committed itself, are immediately binding and are superior to law.



## National Housing Rights Legislation



### **Czech Republic**

Law No. 116/1994 Coll.

[Law No. 116/1994 Coll. amends Law No. 87/1991 Coll. on out-of-court rehabilitation, as amended. Under this law, dealing specifically with agricultural land and property, entitled persons defined in section 4 were compensated, above all by the return of real estate (sect. 6), compensation for buildings which could not be yielded up (sect. 14) and compensation for animate and inanimate chattels (sect. 20).]





## National Housing Rights Legislation



### Czech Republic

Law No. 87/1991 Coll.

[On 2 February 1991, the Czech and Slovak Federal Government adopted Act 87/1991, which entered into force on 1 April 1991. It endorses the rehabilitation of Czech citizens who had left the country under communist pressure and lays down the conditions for restitution or compensation for loss of property. Under Section 3, subsection 1, of the Act, those who had their property turned into State ownership in the cases specified in Section 6 of the Act are entitled to restitution, but only if they are citizens of the Czech and Slovak Federal Republic and are permanent residents in its territory.

Under Section 5, subsection 1, of the Act, anyone currently in (illegal) possession of the property shall restitute it to the rightful owner, upon a written request from the latter, who must also prove his or her claim to the property and demonstrate how the property was turned over to the State. Under subsection 2, the request for restitution must be submitted to the individual in possession of the property, within six months of the entry into force of the Act. If the person in possession of the property does not comply with the request, the rightful owner may submit his or her claim to the competent tribunal, within one year of the date of entry into force of the Act (subsection 4).]

NOTE: The Constitutional Court of the Czech Republic reached a decision on 12 July 1994 and issued a Finding that eliminates the requirement of permanent residence as a condition to exercise the right to claim property seized by the Communist government of Czechoslovakia during the period between 25 February 1948 and 31 December 1989. The requirement for the claimant to hold Czech citizenship, however, remains valid.



## National Housing Rights Legislation



### Democratic People's Republic of Korea Constitution (1972)

#### Article 25(3)

The State shall provide all working people with every condition for obtaining food, clothing and housing.

#### Article 28

The State increases the role of the country and strengthens its guidance and assistance to the countryside in order to eliminate the difference between town and country and the class distinction between the working class and peasantry. The state undertakes the building of production facilities of the cooperative farms and modern houses in the countryside at its expense.

#### Article 69

The State provides functional modern houses and hostels for the working people. The State builds modern rural houses at its expense and offers them free for the use of co-operative farmers.



## National Housing Rights Legislation



### Democratic Republic of Congo Constitution (1992)

#### Article 34(1)

The State is the guarantor of public health. Every citizen shall have the right to a level of life sufficient to assure his health, his well-being and that of his family, notably food, clothing, shelter, medical care as well as necessary social services.



## National Housing Rights Legislation



### Denmark

Act on Housing Co-operatives (Act No. 441, 30 June 1993)

[For those groups who have difficulty in finding and retaining a home, the normal types of housing on offer are not adequate, and special schemes are needed for them. An example of a housing act which is aimed at solving the special needs of these groups is the Act on Housing Co-operatives....The Act is directly aimed at certain groups...these groups include the homeless, the mentally handicapped, the elderly, the disabled, people suffering from senile dementia, and refugees during the integration phase.] <sup>(33)</sup>



## National Housing Rights Legislation



### Denmark

#### Act on Housing for the Elderly (1987)

[According to the 1987 Act on Housing for the Elderly the local authorities may provide the number of dwellings for the elderly and the disabled which they consider suitable for meeting local wishes and needs.] <sup>(35)</sup>



## National Housing Rights Legislation



### Denmark

#### The Danish Rent Act

[The Danish Rent Act provides tenants certain rights with respect to rent increases, terms of notice, etc. In this connection it should be added that a large proportion of the socially disadvantaged population live as tenants in privately rented dwellings.] [\(30\)](#)



## National Housing Rights Legislation



**Denmark**

Law on Social Assistance

The law on social assistance places on the town councils the burden of supplying suitable housing.



## National Housing Rights Legislation



### **Dominica** Constitution (1978)

#### Section 1

Whereas every person in Dominica is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origin, political opinions, colour creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:

- (c) Protection for the privacy of his home and other property and from deprivation of property without compensation.





## National Housing Rights Legislation



### **Dominica** Nationality and Racial Offences Act

#### Section 4.

- (1) Where the licence or consent of the landlord of or any other person is required for the disposal to any person of premises comprised in a tenancy that licence or consent shall be deemed to be unreasonably withheld if and so far as it is withheld on the ground of colour, race or ethnic or national origins.
- (2) Any covenant, agreement or stipulation which purports to prohibit the disposal of premises comprised in a tenancy to persons by reference to colour, race or ethnic or national origins shall be null and void.
- (3) In this section “tenancy” means a tenancy created by a lease or sub-lease, by an agreement for a lease or sub-lease or by a tenancy agreement or in pursuance to any enactment; and “disposal in relation to premises comprised in a tenancy includes assignment or assignation of the tenancy and subletting or parting with possession of the premises or any part of the premises.
- (4) This section applies to tenancies created before as well as after the passing of this Act; but does not apply to a tenancy of premises forming part of the dwelling house of which the remainder of part of the remainder is occupied by the person whose licence or consent is required, as his own residence.



## National Housing Rights Legislation



### **Dominican Republic** Constitution (1994)

#### Article 15

With the aim of strengthening its stability and well-being and its moral, religious and cultural life, the family shall receive the broadest possible protection from the State. ...

- (b) The establishment of every Dominican home on land or with improvements belonging to the occupant is declared to be of high social interest. To this end, the State shall encourage the development of public credit on advantageous terms, intended to make it possible for all Dominicans to possess a comfortable and sanitary home.

#### Article 17

The State shall encourage the progressive development of social security so that every person shall be able to enjoy adequate protection against unemployment, sickness, disability and old age.

The State shall also offer social assistance to the poor. This assistance shall consist of food, clothing, and, in so far as possible, adequate housing.



## National Housing Rights Legislation



### **Dominican Republic**

Decree 76-94 (1994)

Recognizing decrees 358-91 and 359-91 ... the environmental and ecological protection of the Izabel and Ozamo rivers ... and the urban and social improvement of the families who live along the rivers in these areas ... is of ...national interest.

[Recognizing] the importance of civil society participation, comprised of NGO's and community representatives. ... More than 12,500 houses will be constructed in Los Alcarizos, Guaricano, Sabana Perdida and Hainamosa, to house the families affected. ...

The urban and environmental reconstruction of the mentioned neighbourhoods [the North Zone] [shall be provided with] electrical energy, aqueducts, sewage systems and the cleansing of the mentioned rivers.



## National Housing Rights Legislation



### **Dominican Republic**

Decree 155-94 (1994)

The Dominican State has the obligation to provide the broadest possible protection possible for the stability of the Dominican family.

The 'sindico' of the National District is to carry out a census of all homes built in the North Zone on state land since October 1957, who were moved there originally, due to decree 3210-57 of 10 October 1957.

It is of social interest that the Dominican State ... give property title to all families who, up to the date of this decree, have built homes on the [mentioned lands] that were declared public property and of social utility via decree 3210-57.



## National Housing Rights Legislation



### East Timor Constitution (2002)

#### Section 9 (International law).

1. The legal system of East Timor shall adopt the general or customary principles of international law.
2. Rules provided for in international conventions, treaties and agreements shall apply in the internal legal system of East Timor following their approval, ratification or accession by the respective competent organs and after publication in the official gazette.
3. All rules that are contrary to the provisions of international conventions, treaties and agreements applied in the internal legal system of East Timor shall be invalid.

#### Section 37 (Inviolability of home and correspondence)

1. Any person's home and the privacy of his or her correspondence and other means of private communication are inviolable, except in cases provided for by law as a result of criminal proceedings.
2. A person's home shall not be entered against his or her will, except under the written order of a competent judicial authority and in the cases and manner prescribed by law.
3. Entry into any person's home at night against his or her will is clearly prohibited, except in case of serious threat to life or physical integrity of somebody inside the home.

#### Section 58 (Housing).

Everyone has the right to a house, both for himself or herself and for his or her family, of adequate size that meets satisfactory standards of hygiene and comfort and preserves personal intimacy and family privacy.



## National Housing Rights Legislation



### **Ecuador** Constitution (1998)

#### Article 23

Without prejudice to the rights established in this Constitution and the effective international instruments, the State will recognize and guarantee to the people the following rights:

- (20) The right to a quality of life that assures health, food and nutrition, potable water, a clean environment, social education, work, use, recreation, housing, dress and other necessary social services.

#### Art. 32

- In order to make effective the right to housing and the conservation of the environment, the municipalities may expropriate, reserve and control areas for future development, in accordance with the law.

The State will promote housing programmes in the public interest.



## National Housing Rights Legislation



**Egypt**  
Constitution (1971)

### Article 44

Homes shall have their sanctity and they may not be entered or inspected except by a causal judicial warrant as prescribed by the law.



## National Housing Rights Legislation



### **El Salvador** Constitution (1982)

#### Article 51

The law shall specify what enterprises and establishments, due to special conditions, are required to provide a worker and his family with suitable housing, schools....and other social services and attention necessary for their well-being.

#### Article 106

Expropriation will proceed because of public utility or social interest, legally proven and after a just indemnification. When expropriation is caused by the necessities of war or public disaster or if it is for the purpose of supplying water or electric power or for the construction of housing or roads, compensation need not be made in advance.

#### Article 119

Housing construction is declared to be a matter of social interest. The state shall endeavour to permit the greatest possible number of Salvadorian families to become homeowners. It shall undertake to see that every farm owner shall provide a sanitary and comfortable home for his workers and tenants, and shall provide facilities to enable small owners to do so.





## National Housing Rights Legislation



### Equatorial Guinea Constitution (1982)

#### Article 20

Every person enjoys the following rights:

- (13) The right to a standard of living which ensures health, nutrition, education, clothing, housing, medical care and necessary social services.



## National Housing Rights Legislation



### **Estonia** Constitution (1992)

#### Article 32 [Property]

- (1) The property rights of everyone are inviolable and enjoy equal protection. No property shall be expropriated without the consent of the owner except in cases of public interest, in accordance with procedures determined by law, and in exchange for equitable and appropriate compensation. Anyone whose property has been expropriated without his or her consent shall have the right to appeal to a court and to contest the expropriation, and the nature and amount of compensation.

#### Article 33

The home is inviolable. No one's dwelling, real or personal property under his or her control, or place of employment shall be forcibly entered or searched, except in the cases and pursuant to procedure provided by law, to protect public order, health or the rights and freedoms of others, to prevent a criminal offence, to apprehend a criminal offender, or to ascertain the truth in a criminal proceeding.



## National Housing Rights Legislation



### Estonia

#### Law on the Fundamentals of Ownership Reform of 1991, as amended in 1993 and Land Reform Act of 1991, as amended in 1993

[Stipulates that the principal process of ownership reform will be the extensive restitution and compensation of unlawfully expropriated properties to their former owners or their heirs. Unlawful expropriation, according to the Acts, is interpreted rather broadly. Subject to restitution or compensation is unlawfully nationalized property, property collectivised and property expropriated in the course of unlawful repressions (as well as property abandoned due to the genuine danger of repression) during the period from June 16, 1940 until June 1, 1981. Restitution concerns a large number of buildings that are actually occupied by tenants (other than the former owner). In order to avoid social tensions, the restitution of such dwellings requires the former owner (or inheritor) to continue the rental contract with the present tenant for at least 3 years after the restitution (unless the tenant and former owner do not reach another agreement). Eligible persons entitled to claim restitution or compensation for property is rather broad and includes:

- 1) former owners if they lived permanently on the territory of Estonia in June 1991, or if they were citizens of the Republic of Estonia on June 16, 1940 (i.e. including present foreign residents);
- 2) heirs of the former owner. If there are none, the parents, spouse and children of the previous owner in equal shares, the spouse of the child of the previous owner, should the child of the previous owner be deceased; the grandchildren of the previous owner and other descendants, should their parent be deceased;
- 3) public and religious organizations, which operated until June 16, 1940, and whose statutory activity has not been terminated.]



## National Housing Rights Legislation



### **Ethiopia** Constitution (1994)

#### Article 40. The Right to Property

- (5) Ethiopian pastoralists have a right to free land for grazing and cultivation as well as a right not to be displaced from their own lands. This implementation shall be specified by law
- (7) Every Ethiopian shall have the full right to the immovable property he builds on the land and to the improvements he brings about on the land by his labor or capital. This right shall include the right to alienate, to bequeath, and where right of use expires, to remove his property, transfer his title, or claim compensation for it. Particulars shall be determined by law.
- (8) Government has the power to expropriate, in the public interest, private property. In all such cases, government shall pay compensation in advance commensurate to the value of the expropriated property.

#### Article 44. Environmental Rights

- (1) All persons have the right to a clean and healthy environment.
- (2) All persons who have been displaced or whose livelihoods have been adversely affected as a result of State programmes have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance.



## National Housing Rights Legislation



**Fiji**  
Constitution (2000)

### Article 38(4)

Every person has the right of access, without discrimination on a prohibited ground, to shops, hotels, lodging-houses, public restaurants, places of public entertainment, public transport services, taxis and public places.

### Article 44(1)

The Parliament must make provision for programs designed to achieve for all groups or categories of persons who are disadvantaged effective equality of access to:

- (b) land and housing.



## National Housing Rights Legislation



**Finland**  
Constitution (2000)

### Section 19(4)

The public authorities shall promote everyone's right to housing and the opportunity to arrange their own housing.



## National Housing Rights Legislation



### France Constitution (1958)

#### Article 55

Treaties or agreements regularly ratified or approved have, from the time of publication, an authority superior to that of laws, provided, in the case of each agreement or treaty, that it is applied by the other party.



## National Housing Rights Legislation



### France

Law 90/449 of 31 May 1990 (visant à la mise en oeuvre du droit au logement [‘Loi Besson’], France) [\(44\)](#)

#### Article 1.

The guarantee of a right to housing constitutes a duty of solidarity for the nation as a whole. Any person or family finding difficulties because of the inability of his resources to meet his needs has the right to collective assistance under conditions fixed by law that will ensure access to decent and independent housing where he can maintain himself.

#### Article 4.

The departmental plan, established for a definite duration, define the categories of persons who in enforcement of the first article, can be called to benefit from it;

This plan must grant priority to persons and families without any accommodation or those threatened with eviction who have nowhere to move, or those living in slums, precarious or insalubrious dwellings or improvised accommodation;

The plan analyses the needs and basic salary, per housing pool of inhabitants, the objectives to guarantee the attainment of housing by the centralisation of their requests for housing, the creation of a supplementary offer of houses and the establishment of financial aid and accompanying specific social measures

The departmental plan is made public by the President of the General Counsel and the Representatives of the State in the department in accordance with opinions of the Departmental Council of Integration.

#### Article 7.

The financing of the “funds of solidarity” for housing are guaranteed by the State and the Department.





## National Housing Rights Legislation



### France

Law 94-624 (1994) <sup>(41)</sup>

[Law 94-624 imposes legal obligations on the local authorities to provide urgent assistance to homeless people and those threatened by homelessness. The law commits departments to elaborating a plan for urgent accommodation of homeless and low-income people by 31 December 1994. Communes with 10,000 to 100,000 inhabitants are obliged to provide one place for the homeless per 2,000 of its inhabitants, and communes with more than 100,000 inhabitants, one emergency accommodation place for every 1,000 inhabitants.] <sup>(42)</sup>



## National Housing Rights Legislation



### France

Law Quillot (1982) <sup>(31)</sup>

["Affirms the right to housing and aimed at bridging the controversy between economic rentability of housing and its affordability for tenants."] <sup>(32)</sup>



## National Housing Rights Legislation



### France

#### Law for the Orientation of Cities and Towns (1991) <sup>(15)</sup>

[This law introduced qualitative changes in the global system of housing subventions and imposed financial solidarity between communes. Namely, one part of the state subsidies is directed from more prosperous to less developed communes which usually have greater needs for social housing. The law recommends that the State and the local communities coordinate such action for the development of local housing programmes. If such programmes are not elaborated, the prefect is authorized to modify urban planning documents in communes in which social housing accounts for less than 20 percent of the total housing stock to ensure that it becomes available. The law promotes the concept of diversification of housing with integration of social dwellings in the urban texture so as to avoid housing segregation of low-income groups.] <sup>(16)</sup>



## National Housing Rights Legislation



**France**

Law of 22 June 1982

The right to housing is a fundamental right.



## National Housing Rights Legislation



**France**  
Law of 31 May 1990

The right to housing is a fundamental right.



## National Housing Rights Legislation



### Georgia Constitution (1991)

#### Preamble

The people of Georgia whose strong will is to establish a democratic social order, economic independence, a social and legal state, guarantee universally recognised human rights and freedoms, strengthen state independence and peaceful relations with other countries, universally announce this constitution based upon many centuries of state tradition and the main principles of the Constitution of 1921.

#### Article 6(2)

The legislation of Georgia corresponds with universally recognised norms and principles of international law. International treaties or agreements concluded with and by Georgia, if they are not in contradiction to the Constitution of Georgia, have prior legal force over internal normative acts.



## National Housing Rights Legislation



### Germany

Constitution of Bavaria (1946)<sup>(68)</sup>

#### Article 106. Right to Housing, Inviolability of the Home

- (1) Each resident of Bavaria has a claim for adequate housing.<sup>(64)</sup>
- (2) The responsibility for the construction of affordable social housing units is the duty of States and local governments.
- (3) The home is for everyone a free place and inviolable.<sup>(65)</sup>



## National Housing Rights Legislation



**Germany**  
Constitution of Berlin (1950)<sup>(69)</sup>

Article 19. Right to Living Space, Inviolability of the Home

(1) Everyone has the right to living space.





## National Housing Rights Legislation



### Germany

Constitution of Brandenburg (1992)<sup>[20]</sup>

#### Article 47. Housing

- (1) The State is obliged, within the framework of its powers, to provide for the realization of the right to adequate housing, in particular through the advancement of housing property, through measures of social housing construction, rental protection and housing subsidies.
- (2) The eviction from a dwelling shall only be carried out if alternative accommodation is provided.



## National Housing Rights Legislation



**Germany**

Constitution of Bremen (1947)<sup>(21)</sup>

### Article 14. Claim for Housing, Inviolability of the Home

- (1) Each resident of Bremen has a claim for adequate housing. It is the responsibility of the State and local governments to advance the realization of this claim.



## National Housing Rights Legislation



### Germany

Constitution of Mecklenburg-Vorpommern (1993)<sup>[72]</sup>

#### Article 17. Employment, Economy and Social Matters

- (3) State, local and municipal governments strive to ensure that everyone will have access to adequate housing space at their disposal. They will support, in particular, the construction of housing and the maintenance of existing housing space. They ensure everyone in the event of an emergency situation, basic shelter.



## National Housing Rights Legislation



**Germany**

Constitution of Sachsen (1992)<sup>[73]</sup>

### Article 7

- (1) The State recognizes the right of everyone to a dignified life, in particular in terms of employment, to adequate housing, to adequate welfare assistance, to social security and to education as an objective of the State.



## National Housing Rights Legislation



### Germany

Constitution of Sachsen-Anhalt (1992)<sup>[24]</sup>

#### Article 40. Housing

- (1) The State and local authorities have responsibilities to ensure support for the construction of housing, the maintenance of existing housing supplies and through other measures to guarantee dignified living space and adequate living conditions for everyone.
- (2) The State and the local authorities shall ensure that no one becomes homeless.



## National Housing Rights Legislation



### Germany

Constitution of Thüringen (1994)<sup>(25)</sup>

#### Article 15. State Objective: Adequate Housing

It is the permanent responsibility of the State to ensure that adequate housing is made available. In order to realize this objective, the State and local authorities will advance the construction and provision of housing within the contexts of social cooperatives and the private sphere.



## National Housing Rights Legislation



### Germany

#### The Basic Law (1949)

##### Article 14. Property, Right of Inheritance, Expropriation <sup>41</sup>

- (1) Property and the right of inheritance are guaranteed. Their content and limits shall be determined by law.
- (2) Property imposes duties. Its use should also serve the public weal.
- (3) Expropriation shall be permitted only in the public weal. It may be effected only by or pursuant to a law which shall provide for the nature and extent of the compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute regarding the amount of compensation, recourse may be had to the ordinary courts.



## National Housing Rights Legislation



### Germany

#### Federal Restitution Law of 1957

[Under the Federal Restitution Law of 1957, property remaining in Germany that had belonged to victims of racial and political persecution was returned to its former owners, and, in cases where owners had perished, to heirs or successor organizations, specifically the Jewish Claims Conference. For objects that no longer existed and thus could not be returned, compensation and indemnification were paid.]





## National Housing Rights Legislation



### Germany

#### Federal Statute on Social Clauses for Areas with Scarce Supply of Dwellings (1993)

##### Article 14.

The State governments are hereby empowered, through legislative rules, to designate areas in which the sufficient provision of the population with rental housing of adequate conditions in a municipality or part of a municipality is particularly scarce. If it is established that a tenant has a right to occupy particular rental accommodation, then the following provisions of Civil Code apply.



## National Housing Rights Legislation



### Germany

#### The Federal Welfare Assistance Act (1994)

[Section 15(a). The local sponsor of welfare assistance may, exercising due discretion, also pay rent arrears in order to maintain the dwelling and prevent homelessness.] [12](#)

[Section 72. Persons (including the homeless) who have special social difficulties, which they cannot themselves overcome, prevent them from participating in community life may claim assistance in particular situations. This assistance includes all measures necessary to avert, eliminate or ease the difficulties. This means, in particular, advice and personal attention for the applicant, as well as measures to help procure and maintain as dwelling.] [13](#)



## National Housing Rights Legislation



### Germany

#### German Act Regulating Unresolved Property of 1990

[The German Act Regulating Unresolved Property regulates unresolved issues of property and assets within the area of the former German Democratic Republic. The Act establishes a framework for the return of assets taken from individuals and associations between 30 January 1933 and 1990. In cases where restitution is not possible, compensation will be made for the loss of property in eastern Germany.]



## National Housing Rights Legislation



### Ghana Constitution (1993)

#### Article 18

- (1) Every person has the right to own property either alone or in association with others.
- (2) No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of the rights or freedoms of others



## National Housing Rights Legislation



**Greece**  
Constitution (1975)

Art. 21(4)

The provisions of housing to those who are homeless or live in inadequate housing conditions shall be the subject of special attention by the State.



## National Housing Rights Legislation



### Guatemala Constitution (1985)

#### Article 67. Protection of native agricultural lands and cooperatives

The lands of the cooperatives, native communities or any other forms of communal possession or collective or agrarian ownership, as well as the family heritage and popular housing shall enjoy the special protection of the State, credit assistance and preferential technology which may guarantee their ownership and development in order to ensure an improved quality of life to all inhabitants.

#### Article 105. Workers' Housing

Through specific entities, the State will support the planning and construction of housing projects, establishing adequate systems of financing that would make it possible to involve the different programmes so that the workers may opt for adequate housing and meet health requirements. The owners of enterprises are obliged to make available to their workers — in cases established by law — the housing units that meet the above-mentioned requirements.

#### Article 119

The following are basic obligations of the state:

- (g) To promote on a priority basis the construction of popular housing through systems of financing so that a larger number of Guatemalan families may have title to it. When resulting or cooperatively-held housing is involved, the system of land tenure may be different.



## National Housing Rights Legislation



### Guatemala

Accord for the Resettlement of the Populations Uprooted by the Armed Confrontation (17 June 1994)

#### Objectives:

To guarantee to the displaced population the full exercise of all their fundamental rights and liberties, in particular those rights and liberties which were affected by the process of displacement. To develop and strengthen the democratization of state structures which will guarantee the exercise by the displaced populations of their constitutional rights and obligations on community, municipal, departmental regional and national levels.



## National Housing Rights Legislation



**Guyana**  
Constitution (1980)

### Article 26

Every citizen has the right to proper housing accommodation.





## National Housing Rights Legislation



**Haiti**  
Constitution (1987)

### Article 22

The State recognizes the right of every citizen to decent housing, education, food and social security.



## National Housing Rights Legislation



### Honduras Constitution (1982)

#### Article 118

The homestead shall be the subject of special legislation designed to protect and further it.

#### Article 123

All children shall enjoy the benefits of social security and education. Every child shall have the right to grow and develop in good health, for whom special care shall be given during the prenatal period, as much for the child as for the mother, both being entitled to food, housing, education, recreation and adequate medical services.

#### Article 141

The law shall determine which employers, according to their capital and the total number of workers, shall be required to provide them and their families with educational, health, housing and other services.

#### Article 178

The right of Hondurans to dignified housing is recognized. The State will formulate and exercise housing programs in the social interest. The law will regulate the renting of housing and premises, the use of urban areas and construction, in accordance with the general interest.

#### Article 179

The State will promote, support and regulate the creation of systems and mechanisms for the use of internal and external resources for the solution of the housing problem.

#### Article 180

All internal and external credits and loans obtained by the State for housing shall be regulated by law for the benefit of the ultimate user of the credit.

#### Article 181

The social fund for housing is hereby created. Its purpose shall be to develop housing in urban and rural areas. A special law shall regulate its organization and functioning.

#### Article 345

Agrarian reform is an essential part of the overall development strategy of the nation and therefore any other economic and social policies that the government may approve shall be formulated and executed in harmony with it, especially those related, inter alia, to education, housing, employment, infrastructure, marketing and technical and credit assistance.



## National Housing Rights Legislation



**Hungary**  
Constitution (1997)

### Article 17

The Republic of Hungary sees to the wants of the needy through a long line of measures. [661](#)



## National Housing Rights Legislation



### India Land Acquisition Act (1894)

#### Section 3(f). Public Purpose

The expression “public purpose” includes —

- i. the provision of village sites, or the extension, planned development or improvement of existing village sites.
- ii. the provision of land for town or rural planning;
- iii. the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned.
- iv. the provision of land for a corporation owned or controlled by the State.
- v. the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason; of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State.
- vi. the provision of land for the carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 (21 of 1860) or under any corresponding law for the time being in force in a State, or a cooperative society within the meaning of any law relating to cooperative Societies for the time being in force in any State.
- vii. the provision of land for any other scheme of development sponsored by Government or with the prior approval of the approval of the appropriate Government, by a local authority;
- viii. the provision of any premises or building for locating a public office, but does not include acquisition of land for Companies.

#### Section 4. Publication of preliminary notification, and powers of officers thereupon

1. Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose (or for a Company) a notification to that effect shall be published in the Official Gazette, and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. (The last of the dates of such publication and the giving of such public notices, being hereinafter referred to as the date of the publication and notification.)
2. Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen — to enter upon and survey and take levels of any land in such locality, to dig or bore into the sub soil; to do all other acts necessary to ascertain whether the land is adopted for such purpose; to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made there on; to make such levels, boundaries and line by placing marks and cutting trenches; and where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle.
3. Provided that no person shall enter into any building or upon any enclosed court of garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days’ notice in writing of his intention to do so.

#### Section 6. Declaration that land is required for a public purpose

Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied after considering the report, if any, made under section 5A, sub section (2) that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary, to such Government or of some officer duly authorized to certify its orders (an different declarations may be made from time to time in respect of different parcels of any land covered by the same notifications under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (whenever required under section 5A, sub-section (2).



## National Housing Rights Legislation



India

### The Slum Areas (Improvement and Clearance) Act (1956)

#### Section 3. Declaration of Slum Areas

1. Where the competent authority upon report from any of its officers or other information in its possession is satisfied as respects any area that the buildings in that area —
  - (a) are in any respect unfit for human habitation; or
  - (b) are by reason of dilapidation, overcrowding, faulty arrangement and design of such buildings, narrowness or faulty arrangement of streets, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health or morals.

It may by notification in the Official Gazette, declare such area to be a slum area.

2. In determining whether a building is unfit for human habitation for the purposes of this Act, regard shall be had to its condition in respect of the following matters, that is to say —
  - (a) repair;
  - (b) stability;
  - (c) freedom from damp;
  - (d) natural light and air;
  - (e) water supply;
  - (f) drainage and sanitary conveniences;
  - (g) facilities for storage, preparation and cooking of food and for the disposal of waste water, and the building shall be deemed to be unfit as aforesaid if and only if it is so far defective in one or more of the said matters that it is not reasonably suitable for occupation in that condition.

#### Section 5. Enforcement of notice requiring execution of works of improvement

1. If a notice under section 4 requiring the owner of the building (or of the land on which the building stands, as the case may be) to execute works of improvement is not complied with, then, after the expiration of the time specified in the notice the competent authority may itself do the works required to be done by the notice.
2. All expenses incurred by the competent authority under this section together with interest at such rate as the Central Government may by order fix, from the date when a demand for the expenses is made until payment, may be recovered by the competent authority from the owner of the building (or of the land on which the building stands, as the case may be) as arrears of land revenues:

Provided that if the owner proves that he —

- a. is receiving the rent merely as agent or trustee for some other person; and
- b. has not in his hands on behalf of that other person sufficient money to satisfy by the whole demand of the authority.

His liability shall be limited to the total amount of the money which he has in his hands as aforesaid.

#### Section 19. Proceedings for eviction not to be taken without permission of competent authority

1. Notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the competent authority —
  - a. institute, after the commencement of the Slum Area (Improvement and Clearance) Amendment Act, 1964 (43 of 1964) any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in a slum area; or
  - b. where any decree or order is obtained in any suit or proceeding institute before such commencement for the eviction of a tenant from any building or land in such area, execute such decree or order.
2. Every person desiring to obtain the permission referred to in subsection (1) shall make an application in writing to the competent authority in such form and containing such particulars as may be prescribed.

3. On receipt of such application, the competent authority, after giving an opportunity to the parties of being heard and after making such summary inquiry into the circumstances of the case as it thinks fit, shall by order in writing, either grant or refuse to grant such permission.
4. In granting or refusing to grant the permission under sub-section (3), the competent authority shall take into account the following factors, namely:
  - a. whether alternative accommodation within the means of the tenant would be available to him if he were evicted;
  - b. whether the eviction is in the interest of improvement and clearance of the slum areas;
  - c. such other factors, if any, as may be prescribed.
5. Where the competent authority refuses to grant the permission, it shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the applicant.



## National Housing Rights Legislation



**India**

### Urban Land (Ceiling and Regulation) Act (1976)

#### Preamble.

[T]he Urban Land (Ceiling and Regulation) Act, 1976 provides for the imposition of a ceiling on vacant land in urban agglomerations and the acquisition of such land in excess of the ceiling limit to regularize the construction of buildings on this land and for matters connected therewith with a view to preventing the concentration of urban land in the hands of a few persons, and speculation and profiteering, with a view to bring about equitable distribution of urban lands to subserve the common good.

#### Section 3. Persons not entitled to hold vacant land in excess of the ceiling limit:

Except as otherwise provided in this Act, on and from the commencement of this Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit, in the territories to which this Act applies under sub-section (2) of Section 1.

#### Section 10. Acquisition of vacant land in excess of ceiling limit

As soon as may be after the service of the statement under Section 9 on the person concerned, the competent authority shall cause a notification giving the particulars of the vacant land held by such person in excess of the ceiling limit and stating that —

- i. such vacant land is to be acquired by the concerned State Government; and
- ii. the claims of all persons interested in such vacant land may be made by them personally or by their agents giving particulars of the nature of their interests in such land.



## National Housing Rights Legislation



**India**

Delhi Development Act (1957)

### Section 15. Compulsory Acquisition of Land

- (1) If in the opinion of the Central Government, any land is required for the purpose of development, or for any other purpose, under this Act, the Central Government may acquire such land under the provisions of the Land Acquisition Act, 1894 (1 of 1894).
- (2) Where any land has been acquired by the Central Government, the Government may, after it has taken possession of the land, transfer the land to the Authority or any local authority for the purpose which the land has been acquired on payment by the Authority or the local authority of the compensation awarded under that Act and of the charges incurred by the Government in connection with the acquisition.





## National Housing Rights Legislation



India

Madhya Pradesh Act No. 15 (1984) (Slum Dwellers Protection Act)

### Section 3. Settlement of Land

- (1) Notwithstanding anything contained in any law for the time being in force, the land occupied by a landless person in any urban area on the 10th day of April 1984 shall subject to the provisions of sub-section (2) be deemed to have been settled in his favour on the said date.
- (2) The Authorized Officer may either settle the land in actual occupation of the landless person not exceeding 50 sqr. metres in leasehold rights in his favour any other land up to 50 sqr. metres.
- (3) The leasehold rights accrued under sub-section (1) shall not be transferable by sub-lease or in any other manner whatsoever except by inheritance.
- (4) If the landless person to whom leasehold rights have accrued in respect of any land under this Act, transfers such land on contravention of the provisions of sub-section (3), the following consequences shall ensue, namely —
  - (i) the lease shall stand cancelled on the date of such transfer;
  - (ii) such transfer shall be null and void;
  - (iii) no leasehold rights shall accrue to the transferee in respect of such land.

### Section 4: Restoration of Possession

- (1) If any landless person to whom leasehold rights have accrued in the land under section 3 is dispossessed from that land or any part thereof otherwise than in due course of law, the Authorized Officer shall on an application made to him by the said landless person within six months from the date of dispossession restore such possession...

### Section 5: Penalty

- (1) Any person who — (i) wrongfully dispossesses or attempts to dispossess an occupier of a dwelling house; or (ii) recovers or attempts to recover rent in any manner from an occupier of dwelling house — shall be punished with rigorous imprisonment which shall not be less than three months.



## National Housing Rights Legislation



### Indonesia

#### Basic Agrarian Law, Law No. 5 (1960) <sup>(a)</sup>

#### Article 2.

- (1) As per the basic regulation in Article 33(3) of the Constitution and subjects as mentioned in Article 1 on land, waters and air space including natural resources affected by development, managed by the State, as an entity of power for the entire population.
- (2) The management by the State as stated in paragraph 1 give authority to:
  - (a) arrange and to take care of the purpose, usage, preparation and maintenance and cultivation of the said land, water and air space;
  - (b) specify and put in order the law on the relationship between the people with the land, water and air space; and
  - (c) specify and put in order the law on the relationship between the people and the action of law with regards to land, water and air space.
- (3) The right derived from the management function of the said State as stated in paragraph 2 of this article is use to improve the community's prosperity, meaning happiness, safety and independence as defined by Indonesian sovereignty and the judicial system.

#### Article 4.

- (1) As per basic rights of authority from the State as stated in Article 2, it is confirmed that the presence of the different rights for the earth's surface which is the land, is to be given to and owned by the people, either personally or together with other people and also with judicial bodies.
- (2) The rights over the land mentioned in paragraph 1 of this Article gives the authority to use the said land and also the contours of the land and water and space necessary for the usage of the land in accordance with the limitations as per these laws and other eminent judicial regulations.

#### Article 16.

- (1) Rights on land and water as mentioned in Article 4 (1) are the following:
  - (a) Rights of ownership;
  - (b) Rights on initiative utilization;
  - (c) Rights on building use;
  - (d) Rights of usage;
  - (e) Rights of lease;
  - (f) Rights to clean the land;
  - (g) Rights to harvest the products of the land;
  - (h) Other rights, not included in the rights mentioned above but which have been stipulated under article 33 of the Constitution.



## National Housing Rights Legislation



### Indonesia

Law of the Republic of Indonesia, Law No.4 (1992) <sup>(2)</sup>

#### Article 5.

- (1) Every citizen has the right to occupy and/or enjoy and/or own a decent house in a healthy, safe, harmonious and orderly environment.
- (2) Every citizen has the obligation and responsibility to participate in the construction of real estate and residential areas.

#### Article 6.

- (1) Activities to construct houses or real estate are conducted by the owner of land title pursuant to the prevailing laws.
- (2) The construction of houses or real estates by a non-owner of land title may be conducted with approval of the owner of land title in a written agreement.

#### Article 7.

- (1) Every person or agency constructing a house or real estate is obliged:
  - (a) to comply with technical, ecological and administrative requirements;
  - (b) to monitor the environment affected by the impact on the basis of the environment monitoring plan;
  - (c) to manage the environment on the basis of the environment management plan.



## National Housing Rights Legislation



### Indonesia

#### Presidential Decree (No. 55 (1993)) Concerning Land Acquisition for the Development of Public Interest <sup>(5)</sup>

##### Article 2.

- (1) The provisions concerning land speculation in this Presidential Decree shall solely be used for the acquisition of land for the implementation of development in the public interest.
- (2) Land acquisition for development in the public interest by the government shall be carried out through the release or the conveyance of rights to land.
- (3) Land acquisition for purposes other than development in the public interest by the Government shall be carried out through sale and purchase, exchange, or any other method agreed voluntarily by the parties concerned.

##### Article 3.

The release or conveyance of a right to land for development in the public interest shall be carried out on the basis of the principle of honouring rights to land.

##### Article 4.

- (1) Land acquisition and plans to fulfil the need for land required for development in the public interest can only be implemented if the proposed plan for development in the public interest is in conformity with and based on the General Spatial Plan already in effect.
- (2) Land acquisition as defined in paragraph (1) in regions where no General Spatial Plan is in effect shall be based on the already effective regional spatial plan or city spatial plan.

...

##### Article 8.

The Land Acquisition Committee has the following tasks:

- (1) to investigate and prepare the inventory of the land, buildings, crops and other structures related to the land to which the rights will be released or conveyed;
- (2) to investigate the legal status of the land to which the rights will be released or conveyed and the supporting documents thereof;
- (3) to assess and propose the amount of compensation for the land to which the rights will be released or conveyed;
- (4) to provide the holder of the right to land with a clarification or information on the plan and purpose of the proposed land acquisition;
- (5) to hold deliberations between the holders of the rights to land and the Government Agency requiring the land for the purpose of determining the form and/or size of compensation;
- (6) to observe the transfer of compensation money to the holders of the rights to land, buildings, crops and other objects on the land;
- (7) to draw up a written report on the implementation on the release or conveyance of the right to land.

##### Article 9.

Land acquisition for the implementation of development in the public interest shall be carried out through deliberation between the parties concerned.

##### Article 10.

- (1) Deliberation shall be held directly between the holders of the right to the land concerned and the Government Agency requiring the land.
- (2) In case the number of land rights holders makes it impossible to organize effective deliberations, the deliberation as meant in paragraph (1) shall be held between the Land Acquisition Committee and the Government Agency requiring the land and representatives appointed from and by the land right holders,

who will act as attorneys of all the land rights holders.

(3) The deliberation as meant in paragraph (1) shall be led by the Chairman of the Land Release Committee.

#### Article 11.

The deliberation shall be carried out in the location indicated in the invitation letter.

#### Article 12.

Compensation in the context of land acquisition shall be given for:

- (a) land rights;
- (b) buildings;
- (c) crops;
- (d) other objects on the land.

#### Article 13.

Compensation can be provided in any of the following forms:

- (a) money;
- (b) land replacement;
- (c) resettlement;
- (d) any combination of two or more of the forms of compensation defined in items a, b and c; and
- (e) any other forms agreed by the parties concerned.

#### Article 14.

Compensation of land held under the right of Ulayat (traditional communal rights) shall be given in the form of public interest (i.e. buildings) or in any other form beneficial to the local community.



## National Housing Rights Legislation



### Iran (Islamic Republic of) Constitution (1979)

#### Article 3

In order to attain the objectives specified in article 2, the government of the Islamic Republic of Iran has the duty of directing all its resources to the following goals:

- (12) the planning of a correct and just economic system, in accordance with Islamic criteria, in order to create welfare, eliminate poverty, and abolish all forms of deprivation with respect to food, housing, work, health care, and the provision of social insurance for all.

#### Article 31

A suitable dwelling, according to need, is the right of every Iranian person and family. The government is responsible for laying the groundwork to accomplish this, with the first consideration given to those who are in need, in particular villagers and labourers.

#### Article 43

The economy of the Islamic Republic of Iran, with its objectives of achieving the economic independence of the society, uprooting poverty and deprivation and fulfilling human needs in the process of development while preserving human liberty, is based on the following criteria:

- (1) The provision of basic necessities for all citizens: housing, food, clothing, hygiene, medical treatment, education and the necessary facilities for the establishment of a family.



## National Housing Rights Legislation



### Iran

#### First Economic, Social and Cultural Plan (1980)

##### Article 1

- (11) In order to enable people to have access to low rental housing and to establish a basis for the construction of sufficient rental houses, the Government is bound to put legal facilities and necessary credits at the disposal of appropriate specialized and guild organizations, which are to be set up for this purpose within the framework of public companies and cooperatives.

##### Article 6

- (4) [Provides for] establishing standards for the construction of urban and rural housing, appropriate production facilities and regional and development criteria; preparation of a legal system to increase the supply of residential units together with reduced area under construction; construction and supply of rented houses, extension of activities for the production of building materials.



## National Housing Rights Legislation



**Iraq**

Interim Constitution (2004)

### Article 23 [Other Rights, Rights of Foreigners]

The enumeration of the foregoing rights must not be interpreted to mean that they are the only rights enjoyed by the Iraqi people. They enjoy all the rights that befit a free people possessed of their human dignity, including the rights stipulated in international treaties and agreements, other instruments of international law that Iraq has signed and to which it has acceded, and others that are deemed binding upon it, and in the law of nations. Non-Iraqis within Iraq shall enjoy all human rights not inconsistent with their status as non-citizens.





## National Housing Rights Legislation



### **Ireland** Housing Act of 1988

The local authorities are obliged to assess the importance of housing needs, to make a census of homeless persons and to set housing priorities.



## National Housing Rights Legislation



**Italy**  
Constitution (1947)

### Article 2 [Human Rights]

The republic recognizes and guarantees the inviolable human rights, be it as an individual or in social groups expressing their personality, and it ensures the performance of the unalterable duty to political, economic, and social solidarity.



## National Housing Rights Legislation



### **Jamaica** Housing Act (1968)

#### Section 4.

- (1) The Ministry of Construction (Housing) under the Act is supposed to construct houses for persons in the low-income categories.



## National Housing Rights Legislation



### Jamaica Rent Restriction Act (1983)

#### Section 25.

- (1) Subject to section 26, no order or judgment for the recovery of possession of any controlled premises, or for the ejection of a tenant therefrom shall, whether in respect of a notice to quit given or proceedings commenced before or after the commencement of this Act, be made or given unless:
- (a) some rent lawfully due from the tenant has not been paid for at least thirty days after it became due; or
  - (b) some other obligation of the tenancy (whether express or implied and whether under the contract of tenancy or under this Act) has been broken or not performed and, in the case of the non-performance of any such obligation by the tenant, has been in default for at least thirty days.
  - (c) the tenant or any person residing or lodging with him or being his sub-tenant has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers or has been convicted of using the premises or allowing the premises to be used for an immoral purpose or the condition of the premises has, in the opinion of the court, deteriorated or become unsanitary owing to acts of waste or by the neglect or default of the tenant or any such person, and, where such person is a lodger or sub-tenant has not, before the making or giving of the order or judgment, taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.
  - (d) the tenant has given notice to quit, and in consequence of that notice, the landlord has contracted to sell or let the dwelling house or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession; or
  - (e) the premises, being a dwelling house or a public or commercial building, are reasonably required by the landlord for:
    - (i) occupation as a residence for himself or for some person wholly dependent upon him or for any person bona fide residing or to reside with him or for some person in his whole-time employment; or
    - (ii) use by him for business, trade or professional purposes; or
    - (iii) a combination of the purposes in such paragraphs (i) and (ii); or
  - (f) the premises, for being building land, are reasonably required by the landlord for:
    - (i) the erection of a building to be used for any of the purposes specified in paragraph (e); or
    - (ii) use by him for business, trade or professional purposes not involving the erection of a building; or
    - (iii) a combination of such purposes; or
  - (g) the premises or any portions thereof, have been compulsorily acquired under the Land Acquisition Act, or are required for the purposes of an approved scheme under the Housing Act;
  - (h) the premises, being a dwelling house or a public or commercial building, are required for the purpose of being repaired, improved or rebuilt; or
  - (i) the premises, being a dwelling house, are required for occupation as a residence by a former tenant thereof who gave up occupation in consequence of his service in any of Her Majesty's Forces during the war; or
  - (j) the premises are required for public purposes; or
  - (k) the dwelling house, or the public or commercial building, or the building erected by the tenant on building land, as the case may be, is by law to be demolished; or
  - (l) the tenant has sub-let, or parted with the possession of, the whole or any part of the premises without either obtaining the consent of the landlord or being expressly authorized by or under the tenancy agreement or lease to do so; or
  - (m) the tenant has been offered by the landlord in writing a new tenancy at a higher rent which is permissible under this Act but otherwise on the same terms as the existing tenancy and failed to accept such offer in writing within a reasonable time; or
  - (n) a dwelling-house has been let to a tenant in the employment of the landlord on condition that the tenancy shall subsist only during the continuance of such employment, or only until the expiration of a period not

exceeding one month after the termination of such employment, and the employment has terminated, or such period has expired as the case may be; or

- (o) a dwelling-house has been let to a tenant in the employment of the landlord in consequence of that employment, and the employment has terminated or the landlord has offered the tenant alternative accommodation.



## National Housing Rights Legislation



### **Jordan** Constitution (1984)

#### Article 10

Dwellings are inviolable and may not be entered except in the circumstances provided for by law and in the manner specified therein.

#### Article 11

No one shall expropriate the property of another person except in the public interest.



## National Housing Rights Legislation



### **Kyrgyzstan** Constitution (1993)

#### Article 33

Citizens of the Kyrgyz Republic shall have the right to housing.

The State promotes the fulfillment of the right to housing by giving and selling state-owned housing, by encouragement of individual house building.



## National Housing Rights Legislation



### Lao People's Democratic Republic Constitution (1991)

#### Article 29

The right of Lao citizens in their bodies and houses are inviolable.





## National Housing Rights Legislation



### Lebanon Constitution (1926)

#### Article 14 [Home]

The citizen's place of residence is inviolable. No one may enter it except in the circumstances and manners prescribed by law.



## National Housing Rights Legislation



### Lesotho Constitution (1993)

#### Article 11. Right to respect for private and family life

(1) Every person shall be entitled to respect for his private and family life and his home.

#### Article 34. Economic opportunities

Lesotho shall adopt policies which encourage its citizens to acquire property including land, houses, tools and equipment; and shall take such other economic measures as the State shall consider affordable.



## National Housing Rights Legislation



### Libyan Arab Jamahiriya

Resolution of the People's Congresses In Their Third Regular Session for 1980, Endorsed by the General People's Congress In Its Sixth Regular Session (1981)

#### Section 4.

Revision of the General Housing Policy and the creation of a Special Housing Bank. The Basic People's Congresses has decided the following:

- (a) Formulation of a Housing Policy whereby the direct role of society would be limited to providing free housing for those unable to earn a living and to construct public project housing units for those unable to participate in the new housing associations.
- (b) Establishment of a Real Estate Investment and Saving Bank to make loans available to citizens and to real estate business. The bank will be a fundamental instrument in providing housing to the citizen who must play a direct and active role in financing the construction of his house and carry out his obligations resulting from obtaining the loan and the ownership of the house.



## National Housing Rights Legislation



**Mali**  
Constitution (1992)

### Article 16

Education, instruction, formation, work, housing, leisure, health and social protection shall constitute recognized rights.



## National Housing Rights Legislation



### Mexico Constitution (1917)

#### Article 4

Every family has the right to enjoy decent and proper housing. The law shall establish the instruments and necessary supports to reach said goal.

#### Article 123

(Sec. A, Subsec. XII) Every agricultural, industrial, mining or other sort of enterprise shall be obliged, as may be laid down in the laws governing this matter, to provide comfortable and hygienic housing for its workers. This obligation shall be met by means of the contributions made by the enterprise to a national housing fund in order to build up deposits in favour of their workers and establish a financing system enabling cheap credit to be granted to them sufficient for them to become owners of such housing. It is considered that it would be in the public interest to adopt a law establishing a body made up of representatives of the Federal Government, the workers and the employers to administer the resources of the national housing fund. The law in question shall lay down the forms and procedures to be followed by the workers if they wish to become owners of the housing aforementioned.

(Sec. A, Subsec. XXX) Cooperative societies for building cheap and hygienic dwellings intended to be bought by workers on an instalment plan shall be deemed to be of public interest.

(Sec. B(f), Subsec. XI) [Lays down the right to housing for workers employed by the Federal Authorities and the Government of the Federal District.]<sup>126</sup>



## National Housing Rights Legislation



### **Mongolia** Constitution (1992)

#### Article 10 [Foreign Policy, Treaties]

- (1) Mongolia adheres to the universally recognized norms and principles of international law and pursues a peaceful foreign policy.
- (2) Mongolia fulfills in good faith its obligations under international treaties to which it is a Party.
- (3) The international treaties to which Mongolia is a Party become effective as domestic legislation upon the entry into force of the laws on their ratification or accession.

#### Article 16

- (13). Privacy of citizens, their families, correspondence, and homes are protected by law.



## National Housing Rights Legislation



### **Mozambique** Constitution (1990)

#### Article 104

The home as well as the correspondence and other forms of private communication of citizens shall be inviolable, except in such cases as specifically stipulated by law.



## National Housing Rights Legislation



**Namibia**  
Constitution (1990)

### Article 13. Privacy

- (1) No persons shall be subject to interference with the privacy of their home, correspondence or communications.





## National Housing Rights Legislation



### Nepal Constitution (1990)

#### Article 22

Except as provided by law, the privacy of the person, house, property, document, correspondence or information of anyone is inviolable.

#### Article 26

- (1) The State shall adopt a policy which is directed towards the upliftment of the standard of living of the general public through the development of the basic structures like public education, health, housing and employment of the general public of all the regions by making equitable distribution of investment of the economic resources for the balanced development in the various geographical region of the country.



## National Housing Rights Legislation



**Netherlands**  
Constitution (1984)

Art. 22.2

The public authorities have the duty of supplying proper housing.



## National Housing Rights Legislation



### **New Zealand** The Housing Act (1955)

[The Housing Act of 1955 allows for the purchase of land and dwellings, and the building of dwellings for State housing purposes.] <sup>(23)</sup>



## National Housing Rights Legislation



### New Zealand

#### The Human Rights Commission Act (1977)

##### Article 25(1): Land, Housing and Other Accommodation:

It shall be unlawful for any person, on his own behalf or on behalf or purported behalf of any principal:

- (a) To refuse or fail to dispose of any estate or interest in land or any residential or business accommodation to any other person; or
- (b) To dispose of such an estate or interest or such accommodation to any person on less favourable terms and conditions than are or would be offered to other persons; or
- (c) To treat any person who is seeking to acquire or has acquired such an estate or interest or such accommodation differently from other persons in the same circumstances; or
- (d) To deny any person, directly or indirectly, the right to occupy any land or any residential or business accommodation; or
- (e) To terminate any estate or interest in land or the right of any person to occupy any land or any residential or business accommodation - by reason of the sex, marital status or religious or ethical belief of that person.



## National Housing Rights Legislation



### New Zealand

#### The Residential Tenancies Act No. 120 (1986)

#### Part II Tenancy Agreements (Preliminary Matters)

##### Section 12. Discrimination on certain grounds prohibited -

- (1) Except with prior consent of the Tenancy Tribunal, a landlord shall not, in respect of the grant, continuance, extension, variation, termination, or renewal of a tenancy agreement, discrimination against any person on any of the following grounds:
  - (a) That the person has had a child, or is pregnant, or is not sterile;
  - (b) That it is intended that a child will reside in the premises or that a child will reside is or has been residing in the premises during the tenancy;
  - (c) That the person is unemployed or likely to become unemployed.
- (2) Except with the prior consent of the Tenancy Tribunal, a landlord shall not, in respect of the grant, continuance, extension, variation, termination, or renewal of a tenancy agreement:
  - (a) Instruct any person to discriminate against any other person on any of the grounds set out in subsection (1) of this section; or
  - (b) State an intention (whether by advertisement or otherwise) to discriminate against any person on any of those grounds.
- (3) Discrimination against any person in contravention of subsection (1) of this section, and the giving of an instruction or the stating of an intention in contravention of subsection (2) of this section, is each hereby declared to be an unlawful act.

#### Part II Tenancy Agreements (Preliminary Matters)

##### Section 45. Landlord's responsibilities -

- (1) The landlord shall:
  - (a) Provide the premises in a reasonable state of cleanliness; and
  - (b) Provide and maintain the premises in a reasonable state of repair having regard to the age and character of the premises and the period during which the premises are likely to remain habitable and available for residential purposes; and
  - (c) Comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises; and
  - (d) Compensate the tenant for any reasonable expenses incurred by the tenant in repairing the premises where -
    - (i) The state of disrepair has arisen otherwise than as a result of a breach of the tenancy agreement by the tenant and is likely to cause injury to persons or property or is otherwise serious and urgent; and
    - (ii) The tenant has made a reasonable attempt to give the landlord notice of the state of disrepair.
  - (e) Take all reasonable steps to ensure that none of the landlord's other tenants causes or permits any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises.
- (2) The landlord shall not interfere with the supply of gas, electricity, water, telephone services, or other services to the premises, except where the interference is necessary to avoid danger to any person or to enable maintenance or repairs to be carried out.
- (3) The provisions of subsection (1) of this section shall apply notwithstanding that the tenant has notice of the state of the premises at the time at which the tenancy agreement is entered into.
- (4) Nothing in subsection (1) of this section shall impose upon the landlord any obligation to repair any damage, or compensate the tenant for any want of repair, arising out of any breach, by the tenant of any obligation imposed on tenants by section 40 of this Act.

(5) In this section “premises” includes facilities.



## National Housing Rights Legislation



### Nicaragua Constitution (1987)

#### Article 26

All persons have the right to:

- (1) privacy and the privacy of their family;
- (2) the inviolability of their home, correspondence, and communications;...

#### Article 64

Nicaraguans have the right to decent, comfortable and safe housing that guarantees familial privacy. The State shall promote the fulfilment of this right.



## National Housing Rights Legislation



**Nigeria**  
Constitution (1989)

### Article 16

(2) The State shall direct its policy toward ensuring:

- (d) that suitable and adequate shelter, food, water supply, reasonable national minimum living wage, old age and pensions, unemployment, and sick benefits and welfare for the disabled are provided for all citizens.





## National Housing Rights Legislation



**Nigeria**

Lagos State Law No. 9 (1976)

### Section 36.

- (9)(i) It shall be unlawful for any landlord to obtain an order for possession of any accommodation under this Edict by fraud, misrepresentation or concealment of any material fact
- (9)(ii) Where any landlord has obtained an order for possession of any accommodation under this Edict and upon an application made by summons by such tenant, the tribunal is satisfied that such order was obtained by fraud, misrepresentation or the concealment of any material fact, the tribunal shall order the landlord to pay reasonable compensation to such tenant.



## National Housing Rights Legislation



### Norway

#### The House Rents Act (1939)

[This Act regulates relations between landlords and tenants. The Act contains provisions giving the tenant the right to have a court consider the validity of a notice of termination of the rent contract (sec. 38). A court of law may declare the notice of termination of the rent contract invalid if it finds that adequate pertinent grounds are lacking, or if the notice of termination is unreasonable. Rent may also be reduced by a court if the courts finds it disproportionate to the value of the dwelling concerned (sec. 35). The tenant does not have the right to sublet the dwelling without the consent of the landlord, but the tenant does have the right to include his or her own or his or her spouse's close relatives in the household, (sec. 24).]<sup>(a)</sup>



## National Housing Rights Legislation



**Pakistan**  
Constitution (1990)

Article 38

The State shall:

- (d) provide basic necessities of life such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment.



## National Housing Rights Legislation



### Pakistan Sind Katchi Abadis Act (1987)

#### Section 11.

(2) Subject to the provisions of the Act, the Authority shall exercise such powers and perform such functions as may be necessary for carrying out the purposes of the Act. Following functions are in Section 11(2) of the Act:

- i) implement policies formulated by Government for the development or improvement of the areas of the Katchi Abadis and regularization of such Katchi Abadis.
- ii) Lay-down guidelines for the implementation of such policies by the concerned authorities;
- iii) identify the Katchi Abadis or areas thereof which may be developed, improved or regularized under this Act and also identify the Katchi Abadis or areas which cannot be regularized as Katchi Abadis.
- iv) arrange or carry out detailed physical surveys, census of occupants of the Katchi Abadis and prepare or cause to be prepared plans and amelioration plans, and designs of infrastructural works in connection with the regularization and development of the Katchi Abadis;
- v) formulate development and financial programmes in respect of the Katchi Abadis and determine implementation strategy of such programmes;
- vi) Oversee the operation of the fund;
- vii) evict or cause to be evicted unauthorized persons or remove or cause to be removed encroachments from a Katchi Abadi or any area which is not regularisable as Katchi Abadis in accordance with the law for the time being in force;
- viii) acquire, hold, control and administer, movable or immovable property or dispose of such property;
- ix) prepare or cause to be prepared scheme or schemes and execute or cause to be executed such scheme or schemes.
- x) undertake, where necessary, low cost housing and re-development schemes for resettlement of shiftees from the Katchi Abadis and the areas which are not regularisable as Katchi Abadis;
- xi) enter into and perform contracts;
- xii) incur expenditures for carrying out the purposes of this Act;
- xiii) arrange civic amenities and civic services in the Katchi Abadis through the Councils or other concerned agencies;
- xiv) take such steps as may be necessary or conducive to the attainment of the objects of the Authority.



## National Housing Rights Legislation



### **Panama** Constitution (1978)

#### Article 109

The State shall establish a national housing policy with the purpose of ensuring the enjoyment of this social right to all of the population, especially low-income groups.



## National Housing Rights Legislation



### Papua New Guinea Constitution (1975)

#### Article 53<sup>(22)</sup>

... [P]ossession may not be compulsorily taken of any property, and no interest or right over property may be compulsorily acquired except...[in certain circumstances].

- (20) [Where acquisition is permitted, just compensation must be made on just terms determined by the government.]



## National Housing Rights Legislation



### Paraguay Constitution (1992)

#### Article 57

About Senior Citizens: Every senior citizen has the right to receive full protection by his family, society, and the State. State organizations will promote the well-being of senior citizens by providing them with social services to meet their needs for food, health, housing, culture, and leisure.

#### Article 59

About Family Property: Family property is hereby recognized as an institution of a social interest. The law will implement a system under which it will operate. Family property will consist of the family house or estate and its furniture and working tools, which cannot be subjected to any attachment.

#### Article 100

About the Right to Housing:

- (1) Every inhabitant of the Republic has the right to decent housing facilities.
- (2) The State will establish conditions conducive to the implementation of this right and will promote housing projects of social interest specially designed for low-income families through adequate methods of financing.



## National Housing Rights Legislation



**Peru**  
Constitution (1993)

### Article 2

All persons have the right ...

- VIII. To the inviolability of the home. No one may enter the home or make investigations or entries in the public register without authorization from the person living in the home or judicial mandate, except for crimes in the act of commission or very serious possibility of their immediate perpetration. Exceptions based on health or serious risk of harm are regulated by law.





## National Housing Rights Legislation



### Peru

#### Law for the Promotion of Access to Formal Property Legislative Decree No. 803 (1996)

[The Peruvian Law for the Promotion of Access to Formal Property (Ley de Promoción del Acceso a la Propiedad Formal – Decreto Legislativo N.º 803) declares that providing Peruvian citizens access to formal property, and providing a mechanism for the registration of property, are in fact matters of national importance. The law further recognizes that such measures are necessary to the protection of the basic property rights of citizens. To this aim, Title 1, Article 2 of the law provides for the creation of an autonomous Commission for the Formalization of Informal Property (Comisión de Formalización de la Propiedad Informal – COFOPRI) which has responsibility, inter alia, for formulating, approving and executing a Programme for the Formalization of Property (as stipulated in Title 1, Article 3). The law also addresses the reorganization of administrative procedures and processes for the formalization of property (Title 2), the appropriation of state lands for the purposes of providing housing (Title 3), and other complementary provisions (Title 4).

English translation is unavailable at this time. The full Spanish text appears below.]

#### Ley de Promoción del Acceso a la Propiedad Formal

#### Decreto Legislativo N.º 803 (1996)

#### EL PRESIDENTE DE LA REPUBLICA

#### POR CUANTO:

La propiedad predial constituye la mayor parte de los activos de los peruanos de menores recursos y, sin embargo, no puede ser utilizada en el mercado legal pues carece de un título debidamente registrado que le confiera valor de intercambio;

Los procedimientos vigentes que debe cumplir esta mayoría de peruanos para titular y registrar sus activos constituyen un régimen discriminatorio que los obliga a perder muchos años en trámites y realizar un cuantioso gasto;

Los títulos otorgados por los procedimientos vigentes han carecido del valor suficiente para movilizar créditos e inversiones en servicios básicos sostenibles;

Es necesario crear un sistema único de formalización de la propiedad que permita la incorporación de los activos de la mayoría de los peruanos a una economía social de mercado para que puedan ser identificados, ubicados y representados en instrumentos de aceptación universal, regidos por un marco institucional que facilite su intercambio;

El sistema generara el incremento del valor de los predios de los peruanos de menores recursos;

Sin acceso a la formalización de sus activos principales, la mayoría de los peruanos no puede beneficiarse plenamente de la nueva política económica, que incluye estabilización de la moneda y privatización;

La mayoría de los peruanos al no contar con un acceso legal efectivo a la propiedad predial recurre al acceso extra legal, como la invasión, atentando contra la seguridad de los pocos que han logrado registrar su propiedad y propiciando la apropiación ilícita de los servicios básicos, sobre todo luz y agua;

El Congreso de la Republica, mediante Ley N.º 26557 ha transferido al Poder Ejecutivo las competencias y procedimientos municipales relacionados con la adjudicación, el saneamiento físico-legal, la titulación y la habilitación urbana, otorgándole la facultad de legislar por un plazo de 120 días el saneamiento físico-legal, de asentamientos humanos en terrenos de propiedad fiscal, municipal o privada mediante la reforma de las competencias, de las entidades publicas y de los procedimientos relacionados con la formalización de la propiedad en todas sus etapas, así como la creación de un organismo especializado encargado de diseñar y ejecutar un programa nacional de formalización que incluya el reconocimiento, la adjudicación, el saneamiento físico-legal, la titulación, la habilitación urbana y el registro de la propiedad predial de la población de menores recursos, así como sobre normas relacionadas a impuestos, contribuciones, aportaciones y demás tributos;

Asimismo, el Congreso de la Republica mediante la Octava Disposición Transitoria y Final de la Ley N.º 26533 ha delegado facultades legislativas al Poder Ejecutivo por un plazo de 360 días para llevar a cabo un proceso de

modernización integral en la organización de las entidades que lo conforman;

Con el voto aprobatorio del Consejo de Ministros; y

Con cargo a dar cuenta al Congreso de la Republica;

Ha dado el Decreto Legislativo siguiente:

## LEY DE PROMOCION DEL ACCESO A LA PROPIEDAD FORMAL

### TITULO I

#### DE LA ENTIDAD PROMOTORA DEL ACCESO A LA PROPIEDAD FORMAL

##### Artículo 1.-

Declarase de interés nacional la promoción del acceso a la propiedad formal y su inscripción registral con el fin de garantizar los derechos de todos los ciudadanos a la propiedad y al ejercicio de la iniciativa privada en una economía social de mercado, establecidos por el inciso 16) del Artículo 2º. y los Artículos 58º. y 70º. de la Constitución Política.

##### Artículo 2.-

Crease la Comisión de Formalización de la Propiedad Informal (COFOPRI), como organismo rector máximo encargado de diseñar y ejecutar de manera integral, comprensiva y rápida un Programa de Formalización de la Propiedad y de su mantenimiento dentro de la formalidad, a nivel nacional, centralizando las competencias y toma de decisiones a este respecto.

La inscripción de los títulos de propiedad formalizados por COFOPRI se realizara en el Registro Predial Urbano a que se refiere el Artículo 10º. de la presente Ley.

COFOPRI constituye un pliego presupuestal con autonomía técnica, funcional, administrativa, económica y financiera. Sus integrantes son designados mediante Resolución Suprema y reportaran directamente al Presidente de la Republica. Será presidida por un Ministro de Estado, que ejercerá la titularidad del pliego presupuestal.

La presente ley crea un nuevo mecanismo institucional que permitirá que la propiedad predial de los sectores informales de menores recursos se pueda convertir en activos líquidos que puedan integrarse al mercado y ser objeto de transacciones; incrementando el valor de las propiedades y posibilitando a sus propietarios el acceso a los servicios de infraestructura básica.

##### Artículo 3.-

Para cumplir el objetivo del Artículo 2º. de la presente ley, son funciones de COFOPRI:

- a) Formular, aprobar y ejecutar un Programa de Formalización de la Propiedad de ámbito nacional que prevea su implementación progresiva, comprendiendo las acciones de identificación y calificación de asentamientos humanos; adjudicación de predios del Estado; promoción y saneamiento físico-legal de los predios; regularización de la habilitación urbana; regularización del tracto sucesivo; titulación; y, promoción del acceso al registro de la propiedad predial en asentamientos humanos, urbanizaciones populares y otros centros poblados que determine COFOPRI, asumiendo las competencias respectivas;
- b) Crear y poner en funcionamiento los mecanismos para promover que las transacciones sobre las propiedades formalizadas se mantengan dentro de la formalidad, cuidando que los costos de esta sean inferiores a los de la informalidad.
- c) Proponer al Presidente de la Republica los dispositivos legales complementarios, su reglamentación y las demás disposiciones que fueran necesarias para el cumplimiento del objetivo principal del Programa de Formalización de la Propiedad a que se refiere el Artículo 2º. de la presente ley;
- d) Asumir, de manera exclusiva y excluyente, las competencias correspondientes a la formalización hasta el otorgamiento de los títulos de propiedad. No esta incluida en esta función el registro de los títulos emitidos por COFOPRI, que estará a cargo del Registro Predial Urbano. Para ejercer sus competencias, COFOPRI dictara, mediante acuerdo de sus miembros, directivas que serán de obligatorio cumplimiento para todas las entidades del Estado vinculadas al proceso de formalización de la propiedad, desde que sean notificadas. Las directivas podrán ser publicadas si así lo determina dicha entidad; podrán ser publicadas si así lo determina dicha entidad;
- e) Proponer la creación de las condiciones institucionales necesarias para el desarrollo de la inversión privada y publica en la prestación de servicios complementarios relacionados con la propiedad, que incluyan la infraestructura de servicios públicos, el crédito y otros;
- f) Aprobar su presupuesto y administrar los recursos financieros provenientes del Tesoro Publico y del Fondo a

que se refieren los Artículos 6.º y 7.º de la presente ley, que se requieran para la ejecución del Programa de Formalización de la Propiedad. COFOPRI podrá encargar la administración, fiscalización y auditoría de dichos recursos a organismos multilaterales o instituciones privadas especializadas, mediante Resolución Suprema.

- g) Celebrar todo tipo de convenios, contratos y acuerdos con instituciones nacionales, extranjeras e internacionales; y,
- h) Las demás que le asigne la presente ley.

#### Artículo 4.-

Para la ejecución de las actividades que integren el Programa de Formalización de la Propiedad y la elaboración de propuestas y estudios relacionados con sus competencias COFOPRI podrá contratar a instituciones privadas.

#### Artículo 5.-

COFOPRI contará con una Gerencia General cuyas principales funciones serán:

- a) Ejecutar los acuerdos de COFOPRI y reportar su cumplimiento directamente a ella;
- b) Supervisar, dirigir y coordinar las actividades de COFOPRI y las instituciones privadas especializadas contratadas;
- c) Representar a COFOPRI; y,
- d) Las demás que le asigne COFOPRI y el Reglamento de la presente.

El Gerente General será designado mediante Resolución Suprema, a propuesta del Ministro que preside COFOPRI.

#### Artículo 6.-

Son recursos de COFOPRI los siguientes:

- a) Los que le otorgue la Ley Anual de Presupuesto y sus modificatorias; y,
- b) Otros recursos asignados de otras fuentes y fondos.

#### Artículo 7.-

Crease el Fondo de Promoción del Acceso a la Propiedad Formal (FOPROP), cuyos recursos serán destinados a financiar las actividades a que se refiere esta ley. La dirección del FOPROP corresponde a COFOPRI. Son recursos del FOPROP:

- a) Las donaciones y legados en efectivo y en especie otorgadas por personas naturales y jurídicas, los créditos internos y externos de fuentes bilaterales o multilaterales y los provenientes de la cooperación técnica internacional, que se obtengan para el cumplimiento de esta ley;
- b) Los ingresos propios que generen la administración de los recursos del FOPROP, incluyendo intereses, y los generados por la información y servicios que brinde; y,
- c) Otros recursos que se le asigne provenientes de otras fuentes y fondos.

#### Artículo 8.-

El personal de COFOPRI está comprendido en el régimen laboral de la actividad privada.

### TITULO II

## DE LA REORGANIZACION ADMINISTRATIVA Y LOS PROCESOS PARA LA FORMALIZACION DE LA PROPIEDAD

#### Artículo 9.-

Las dependencias e instancias de las municipalidades provinciales, las entidades del Ministerio de Transportes, Comunicaciones, Vivienda y Construcción, la Superintendencia de Bienes Nacionales, la Empresa Nacional de Edificaciones (ENACE) y las demás entidades públicas que hubiesen estado dotadas de competencias vinculadas con el proceso de formalización y/o cuente con información o documentación relacionada con dicho proceso, ajustarán sus actividades a esta ley y a las directivas que dice COFOPRI, transfiriéndole a su requerimiento todo el acervo documentario del que dispongan y colaborando con las acciones que ella ejecute, bajo responsabilidad del titular del pliego. Artículo 10.-

El Registro Predial de ámbito urbano, a que se refieren los Decretos Legislativos Nos. 495 y 496, en adelante el

Registro Predial Urbano, es una institución pública descentralizada, con autonomía registral, técnica, administrativa, económica y financiera, constituye un pliego presupuestal, y goza de todas las garantías establecidas por el Artículo 3º. de la Ley N.º. 26366, es decir:

- a) La autonomía de sus funcionarios en el ejercicio de sus funciones registrales;
- b) La intangibilidad del contenido de los asientos registrales, salvo título posterior, sentencia judicial o laudo arbitral firme;
- c) La seguridad jurídica de los derechos de quienes se amparan en la fe del Registro; y
- d) La indemnización por los errores registrales, sin perjuicio de las demás responsabilidades que correspondan conforme a ley.

El Registro Predial Urbano dependerá sectorialmente del Ministerio cuyo titular presida la COFOPRI. Este Ministerio asume las competencias sectoriales que sobre dicho Registro ejercía la Superintendencia Nacional de los Registros Públicos (SUNARP).

El Registro Predial de Lima se integra al Registro Predial Urbano y mantiene, por excepción, sus competencias sobre el ámbito rural del departamento de Lima.

Los Registros Prediales Rurales Regionales, a que se refiere el Decreto Legislativo N.º. 667, deberán instalarse en el resto del país específica y exclusivamente para el ámbito rural, conforme a su propia normatividad.

El Registro Predial Urbano se rige por los Decretos Legislativos Nos. 495 y 496, sus reglamentos y directivas, en todo aquello que no sea modificado por la presente ley y sus reglamentos.

El Registro Predial Urbano se encuentra facultado para emitir sus directivas registrales, fijar las tasas y derechos por los servicios e información que suministre a terceros y nombrar, sancionar y remover a sus registradores, a los Registradores Especiales a que se refiere el artículo siguiente y a sus demás trabajadores. El personal del Registro Predial Urbano está comprendido en el régimen laboral de la actividad privada.

El Ministro a cuyo sector pertenece el Registro Predial Urbano nombrará, sancionará y removerá a la máxima autoridad de dicho Registro y aprobará un nuevo Estatuto que sustituya su estructura orgánica y funcional aprobada por el Decreto Legislativo N.º. 496 y la Resolución N.º. 078 95 SUNARP;

#### Artículo 11.-

Para el cumplimiento de los objetivos de la presente ley, los Registradores Especiales designados por el Registro Predial Urbano, tendrán acceso a la información registral del Registro de la Propiedad Inmueble, del Registro de Personas Jurídicas y de todo otro registro del Sistema Nacional de los Registros Públicos que cuenten con información registral necesaria para la formalización de la propiedad.

Los Registradores Especiales solicitarán al registrador público encargado el bloqueo, traslado y cancelación de las partidas registrales con sus respectivas copias, así como los certificados de vigencia de poderes que requieran. Vencido el plazo de cinco días a que se refiere la octava disposición complementaria de la Ley N.º. 26366 modificada por la Ley N.º. 26434, los Registradores Especiales ejecutarán directamente los actos mencionados.

Las contiendas de competencia relacionadas con el traslado de partidas registrales que pudieran generarse, serán resueltas en última instancia por la máxima autoridad del Registro Predial Urbano.

#### Artículo 12.-

Los titulares de predios ubicados en urbanizaciones populares y centros poblados incorporados al Programa de Formalización, que se encuentren poseyéndolos y cuenten con títulos de propiedad que no puedan ser inscritos por presentar deficiencias en la continuidad de las transmisiones de dominio que preceden a su derecho, podrán solicitar a COFOPRI, directamente o a través de los representantes de las organizaciones que integran, la regularización de la inscripción de su derecho de propiedad.

De ser resuelta favorablemente la solicitud, COFOPRI expedirá la resolución que los declare propietarios y comunicará al Registro Predial Urbano para que proceda a cancelar las inscripciones existentes respecto del predio y a inscribir su derecho de propiedad en la forma, plazos y mediante los medios de publicidad que tutelen los derechos de terceros, que se establezcan en el reglamento.

El mismo derecho corresponde a quienes, al amparo de lo establecido por el Artículo 950.º del Código Civil, hayan adquirido predios en urbanizaciones populares y centros poblados incorporados al Programa de Formalización.

#### Artículo 13.-

Con el fin de dar cumplimiento a lo previsto en la presente ley y por razones operativas, COFOPRI asume la titularidad de los terrenos estatales, fiscales y municipales ocupados por asentamientos humanos en proceso de saneamiento físico-legal, para lo cual se inscribirá automáticamente dicha titularidad en el Registro respectivo.

COFOPRI no adjudicará más de una propiedad a un mismo titular dentro del ámbito de una misma provincia.

#### Artículo 14.-

Los contratos de transferencia de propiedad emitidos por la Corporación Nacional de la Vivienda, la Junta Nacional de la Vivienda, la Oficina Nacional de Pueblos Jóvenes, SINAMOS o ENACE serán inscritos en el Registro Predial Urbano por el simple mérito de su presentación por el titular con su respectiva declaración jurada, la que quedará sujeta a las verificaciones previstas en la Ley N.º 25035, de Simplificación Administrativa.

Asimismo, de existir adeudos pendientes ante entidades crediticias, bancarias o financieras en liquidación (como el Banco Central Hipotecario, el Banco de la Vivienda y las Mutuales), presentarán el recibo de cancelación y la correspondiente declaración jurada.

#### Artículo 15.-

Los programas de vivienda ejecutados por el Estado que a la fecha de vigencia de la presente ley, no hubiesen culminado su proceso de formalización, incluyendo el registro de la titulación individual, serán regularizados por COFOPRI trasladando las partidas matrices al Registro Predial Urbano, en la forma y plazos que se establezca mediante directiva de COFOPRI.

#### Artículo 16.-

COFOPRI constituye la última instancia administrativa para resolver, de manera directa o mediante delegación, las peticiones y reclamos de carácter particular presentados por los interesados durante la ejecución del Programa de Formalización de la Propiedad, respecto de:

- a) Los asuntos de su competencia establecidos en el Artículo 3.º y otras normas de la presente Ley;
- b) La representación legal de las organizaciones para los fines de la formalización de la propiedad de sus integrantes;
- c) Los problemas de colindancia entre predios correspondientes a dos o más organizaciones y entre predios de los individuos que las integran;
- d) La determinación del titular del derecho a la adjudicación de la propiedad individual;
- e) La determinación del titular del derecho de propiedad en los procedimientos a que se refiere el Artículo 12.º de la presente ley; y,
- f) Otros asuntos que establezcan el reglamento.

Las resoluciones que sobre las materias señaladas dicta COFOPRI, o sobre aspectos registrales del Registro Predial Urbano, agotan la vía administrativa, causan estado y podrán ser impugnadas por los interesados exclusivamente ante el Sistema Arbitral Especial de la Propiedad a que se refiere el Artículo 17.º de la presente ley, para la resolución definitiva del derecho que corresponda.

La impugnación ante el Sistema Arbitral de la Propiedad deberá interponerse en el plazo de cinco (5) días hábiles posteriores a su notificación o publicación y COFOPRI o el Registro Predial Urbano, según corresponda la remitirá al Sistema Arbitral. La impugnación interpuesta suspende la ejecución de la resolución emitida por COFOPRI.

El reglamento fijará los procedimientos, requisitos instancias y plazos respectivos.

#### Artículo 17.-

Establézcase un Sistema Arbitral Especial de la Propiedad para la solución de los conflictos, las controversias, declaraciones, determinación de mejor derecho, incertidumbre jurídicas o de hecho, jurídica o factualmente trascendentes, que se produzcan en los asentamientos humanos, urbanizaciones populares y centros poblados que sean incorporados al Programa de Formalización de la Propiedad, para lo cual el Sistema tendrá competencia territorial sobre dichas áreas. Esta incorporación genera, de pleno derecho, la aceptación previa, automática y expresa de un convenio arbitral por parte de los integrantes de dichas poblaciones, así como su sometimiento a la jurisdicción arbitral creada por esta ley. No se admitirá renuncia, reserva o pacto en contrario, entendiéndose que para ello dicho acto se halla dentro del supuesto normativo de la Primera Disposición Complementaria y Transitoria de la Ley General de Arbitraje N.º 26572.

El Sistema Arbitral también tendrá competencia territorial en las áreas rurales del departamento de Lima que sean incorporadas al Programa de Formalización de la Propiedad.

El Sistema Arbitral Especial de la Propiedad tendrá facultad exclusiva y excluyente de toda otra Jurisdicción para resolver, de oficio o a petición de parte, las siguientes materias:

- a) La definición de su propia competencia.

- b) Las impugnaciones que presenten los interesados contra las resoluciones de carácter particular que emita COFOPRI de manera directa o delegada y causen estado; y
- c) Las demás que se establezcan en el Reglamento.

Los jueces se abstendrán, de oficio o a petición de parte, de conocer las materias que se sometan a su conocimiento cuando corresponda al Sistema Arbitral Especial de la Propiedad, debiendo declarar la nulidad de todo lo actuado y el archivamiento definitivo del proceso en el estado en que se encuentre, bajo responsabilidad civil, administrativa y penal.

Los aludos expedidos por el Sistema Arbitral Especial de la Propiedad son definitivos, tienen la calidad de cosa juzgada material y contra ellos no procede acción, pretensión, recurso o impugnación ordinaria o extraordinaria alguna ante el Poder Judicial, que deberá declarar inadmisibles, bajo responsabilidad civil, administrativa y penal, cualquier petición que pretenda contravenir esta disposición.

El Órgano de Gobierno del Poder Judicial designará en cada Distrito Judicial, Juzgados Civiles de Primera Instancia para el conocimiento del trámite de ejecución de los laudos expedidos por el Sistema Arbitral Especial de la Propiedad. Estos Juzgados Civiles ejecutarán los laudos dentro del tercer día de remitidos por el Sistema Arbitral dentro del tercer día de remitidos por el Sistema Arbitral Especial de la Propiedad, con citación de los interesados y de los terceros legitimados apersonados al procedimiento arbitral. COFOPRI, el Registro Predial Urbano, cualquier otra dependencia estatal, así como las personas naturales y jurídicas cumplirán lo dispuesto en el laudo. Contra la orden de ejecución del laudo no procede recurso o articulación alguna que impida o pretenda retrasar dicha ejecución, bajo responsabilidad civil, administrativa, funcional y penal del Juez respectivo. Cualquier apelación que fuese concedida se entenderá otorgada sin efecto suspensivo, siendo nula de pleno derecho cualquier disposición o estipulación en contrario, bajo responsabilidad.

Un reglamento especial establecerá la dirección y administración del sistema, el número y las condiciones de los árbitros, el procedimiento, los plazos y las demás características del Sistema Arbitral Especial de la Propiedad.

En todo lo no previsto en la presente ley y su reglamento, rige supletoriamente lo establecido en la Ley General de Arbitraje y el TUO del Código Procesal Civil para el Proceso de Ejecución, con excepción de lo dispuesto en sus Artículos 700. y 702.

#### Artículo 18.-

Las reclamaciones planteadas con posterioridad a la inscripción definitiva de un predio en el Registro Predial Urbano, dirigidas a enervar el título en virtud del cual se extendió la primera inscripción individual de propiedad de un predio cuya matriz se encuentra inscrita en dicho Registro, podrán ser interpuestas ante el órgano jurisdiccional respectivo conforme a los procedimientos vigentes, siempre que la reclamación no haya sido resuelta, consentida o ejecutoriada previamente en la vía administrativa de manera directa o delegada, por COFOPRI o el Registro Predial Urbano, o en la jurisdicción del Sistema Arbitral Especial de la Propiedad.

Las reclamaciones se dirigirán contra el titular con derecho inscrito y, si fueran declaradas fundadas, darán únicamente derecho a que se ordene el pago de una indemnización de carácter pecuniario por daños y perjuicios en favor del demandante. En tales casos el titular con derecho inscrito mantendrá la validez legal de su título e inscripción, los que serán incontestables mediante acción, pretensión o procedimiento alguno, y quedará obligado al pago de la indemnización aludida.

Las acciones a que se refiere el presente artículo caducarán en el plazo establecido en el inciso 4) del Artículo 2001. del Código Civil.

### TITULO III

#### DE LA ADJUDICACION DE TIERRAS DEL ESTADO CON FINES DE VIVIENDA

#### Artículo 19.-

Declarase de interés nacional el establecimiento de un proceso único y simplificado para el acceso a la propiedad predial de terrenos del Estado para los sectores de menores recursos, que garantice que:

- a) La población de menores recursos pueda acceder a la propiedad de terrenos con fines de vivienda, sin necesidad de recurrir a invasiones de tierras estatales o privadas;
- b) El Estado cuente con la información sobre las tierras de su propiedad que pueden ser adjudicadas a la población para satisfacer sus necesidades de vivienda, y
- c) El Estado pueda responder a la demanda de terrenos para fines de vivienda de manera ordenada, sobre la base de una administración de las tierras estatales disponibles para dicho fin, que permita la ejecución de programas de adjudicación.

#### Artículo 20.-

Aquellos terrenos de propiedad estatal que hubieran sido invadidos o ocupados ilegalmente con posterioridad al 31 de octubre de 1993 y sus ocupantes, se adeudaran a lo dispuesto en el presente Título III, siguiendo el procedimiento de adjudicación de tierras establecido por los Artículos 19.º al 27.º de la presente Ley.

La posesión inmediata, directa y física de un terreno del Estado por invasión u otro medio de ocupación ilegal, con posterioridad al 31 de octubre de 1993, no genera derecho expectatio alguno.

COFOPRI no adjudicara los terrenos ocupados ilegalmente a sus propios poseedores. Dichos poseedores deberán inscribirse en el Padrón a que se refiere el Artículo 27.º de la presente ley, a efectos de que sean considerados en alguno de sus programas de adjudicación.

#### Artículo 21.-

La formalización y adjudicación de la propiedad en terrenos del Estado para fines urbanos se ceñirá a lo dispuesto en la presente ley y sus reglamentos, los que se ajustaran a los principios de la Ley N.º 25035, de Simplificación Administrativa.

#### Artículo 22.-

Las municipalidades provinciales definirán las áreas de expansión urbana dentro de su jurisdicción, precisando e informando a COFOPRI lo siguiente:

- a) Los límites y las áreas correspondientes a la expansión urbana;
- b) Las áreas reservadas de equipamiento social (para educación, salud y recreación);
- c) La proyección de los esquemas viales primarios y secundarios con el fin de realizar las reservas de áreas respectivas; y,
- d) Los terrenos no aptos para fines de vivienda por constituir zonas riesgosas; carentes de las condiciones de higiene y salubridad; zonas con valor histórico; zonas de explotación minera; y, zonas reservadas para la defensa nacional, determinados en coordinación con las entidades públicas encargadas.

El reglamento establecerá la forma, los plazos, el mecanismo y las condiciones mediante los cuales COFOPRI asegurara la ejecución de lo dispuesto en el presente artículo.

#### Artículo 23.-

No podrán ser objeto de adjudicación para fines de vivienda, las áreas a que se refieren los incisos b), c) y d) del Artículo 22.º de la presente ley, ni los de propiedad privada.

#### Artículo 24.-

El Registro Predial Urbano inscribirá automáticamente a nombre del Estado las áreas reservadas a que se refieren los incisos b) y c) del Artículo 22.º de la presente ley, a fin de proteger el crecimiento ordenado de la ciudad.

#### Artículo 25.-

COFOPRI elaborara el Inventario de Tierras para fines de Vivienda, sobre la base de la información proporcionada por las municipalidades provinciales, la que incluirá las tierras estatales disponibles y los elementos que faciliten establecer el precio de los terrenos que serán materia de adjudicación.

#### Artículo 26.-

COFOPRI aprobara el Plano Perimétrico de Trazado y Lotización de los terrenos objeto de adjudicación, el mismo que será inscrito en el Registro Predial Urbano a nombre de COFORPI.

#### Artículo 27.-

COFOPRI llevara un Padrón de Solicitantes de Terrenos para Vivienda, en el que se inscribirán los interesados que no cuenten con otra propiedad predial urbana en la provincia.

La prioridad para la adjudicación de los terrenos solicitados se regulara teniendo como base el orden de inscripción en el Padrón.

### TITULO IV

#### DISPOSICIONES COMPLEMENTARIAS,

## TRANSITORIAS Y FINALES

### Artículo 28.-

El Programa de Formalización de la Propiedad, que incluye el Sistema Arbitral Especial a que se refiere el Artículo 17. de la presente ley, se pondrá en funcionamiento progresivamente en todo el país, de acuerdo a un cronograma que establecerá COFOPRI mediante directiva.

Los procedimientos en trámite en las zonas en que COFOPRI asuma competencia, serán resueltos por dicha entidad de acuerdo a las disposiciones establecidas en sus reglamentos y directivas.

### Artículo 29.-

En tanto no se emitan las directivas a que se refiere el artículo anterior, las entidades públicas que a la fecha de vigencia de la presente ley se encontraban dotadas de competencias relacionadas con la formalización de la propiedad, continuarán ejerciéndolas hasta que sean notificadas por COFOPRI. En tanto no se apruebe su Estatuto, el Registro Predial de Lima culminará su proceso de reorganización, cubriendo las plazas vacantes.

Todas las entidades mencionadas aplicarán a los procedimientos en trámite lo dispuesto en los Decretos Legislativos Nos. 495 y 496 y los Decretos Supremos N.º 001-90-VC y 002 90 VC.

### Artículo 30.-

Las municipalidades provinciales aplicarán el Reglamento de Habilitación Urbana para Urbanizaciones Populares aprobado por el Decreto Supremo N.º 001 90 VC.

Las urbanizaciones populares que cuenten con construcciones consolidadas, quedarán automáticamente incorporadas al área de expansión urbana de la municipalidad provincial correspondiente y, en tanto las referidas municipalidades no le asignen bonificación, tendrán una zonificación residencial de densidad media.

### Artículo 31.-

Modifícase el inciso d) del Artículo 2.º del Decreto Legislativo N.º 495, el mismo que queda redactado de la siguiente manera: "Se entiende por Urbanizaciones Populares, aquellas de las que son titulares las Cooperativas de Vivienda, Asociaciones Pro Vivienda, Asociaciones de Vivienda, Juntas de Propietarios, Juntas de Compradores y cualquier otra forma asociativa con fines de vivienda."

### Artículo 32.-

Las prendas agrícolas que constituyan los propietarios o poseedores de predios rurales inscritos en el Registro Predial de Lima, se registrarán exclusivamente en las partidas registrales de dichos predios. El Reglamento establecerá los requisitos y procedimientos para la inscripción y puestas en funcionamiento de lo dispuesto en este artículo.

### Artículo 33.-

Modifícase el Artículo 17.º de la Ley N.º 26366 el mismo que quedará redactado de la siguiente manera: "El Directorio es el órgano de la Superintendencia encargado de aprobar las políticas de su administración. Está integrado por el Superintendente Nacional de los Registros Públicos, quien lo preside, por un representante de la Presidencia del Consejo de Ministros, un representante del Ministerio de Economía y Finanzas y por un representante del Ministerio que preside COFOPRI, quien solo tendrá derecho a voz.

### Artículo 34.-

A efectos de la implementación del Programa de Formalización de la Propiedad a que se refiere el presente ley, exonerase a COFOPRI y al Registro Predial Urbano de la aplicación de las normas sobre proceso presupuestario, austeridad, remuneraciones y mecanismos de contratación o contrata, establecidos en la Ley Marco del Presupuesto del Sector Público y en la Ley Anual de Presupuesto vigente y sus modificatorias.

Considérese a COFOPRI y al Registro Predial Urbano como entidades en proceso de implementación por un período de tres años, contados desde la vigencia de la presente ley. Sus presupuestos y procesos presupuestarios, normas de austeridad y remuneraciones son determinados mediante directiva de cada una de estas entidades, tomando en cuenta criterios similares a los establecidos por la Oficina de Instituciones y Organismos del Estado del Ministerio de Economía y Finanzas.

La contratación de los bienes y servicios requeridos por COFORPI y el Registro Predial Urbano para el desarrollo del Programa de Formalización de la Propiedad se realizará a través de concursos o adjudicación directa, mediante procedimientos, excepciones y montos cuyas características se establecerán en los reglamentos que aprueben dichas entidades mediante directivas. Los reglamentos deberán prever procedimientos que garanticen que la



elección de los proveedores, contratistas y consultores sea el resultado de un proceso de selección entre varios candidatos o que las condiciones de calidad del servicio y de costo ofrecidas estén entre las más competitivas del mercado o que la experiencia en el desarrollo de las actividades relacionadas con el Programa de Formalización en el país ofrezca ventajas significativas para la realización de las actividades contratadas.

El FOPROP será administrado directamente por COFORPI, según los procedimientos y pautas que establezca mediante directiva y en concordancia con las disposiciones de las fuentes proveedoras de sus recursos, quedando exonerado de las normas de la Ley Anual de Presupuesto vigente y sus modificatorias.

El Registro Predial Urbano administrará directamente sus recursos propios, los que le sean asignados y los provenientes de donaciones, legados, créditos internos y externos de fuentes bilaterales o multilaterales o de la cooperación técnica internacional, que se obtengan para el cumplimiento de los fines de esta ley.

Asimismo, autorizase al Gerente General de COFOPRI y a la máxima autoridad del Registro Predial Urbano para que gestionen los recursos necesarios ante las autoridades pertinentes.

#### Artículo 35.-

Exonerase del Impuesto de Alcabala a la primera transferencia de dominio realizada por el Estado en favor de urbanizaciones populares, en los procesos de regularización de su propiedad seguidos durante la ejecución del Programa de Formalización de la Propiedad.

#### Artículo 36.-

Las transferencias, información, documentación y cualquier otra acción dispuesta por COFOPRI o el Registro Predial Urbano para la ejecución del Programa de Formalización de la Propiedad estarán exoneradas del pago de cualquier tasa, arancel, derecho registral o municipal u otro cobro por los servicios requeridos.

#### Artículo 37.-

La presente ley será reglamentada mediante Decretos Supremos, con excepción de aquellos reglamentos que deban ser aprobados mediante directivas de COFOPRI o del Registro Predial Urbano, conforme a lo dispuesto en esta ley.

#### Artículo 38.-

Deroganse el penúltimo párrafo del Artículo 2., el inciso b) del Artículo 14., el segundo párrafo del Artículo 15., el segundo párrafo del Artículo 19. y la primera, la séptima y la novena disposición complementaria de la Ley N. 26366. Asimismo, deróguese, modifíquese o déjese sin efecto las demás normas que se opongan a la presente ley.

#### Artículo 39.-

La presente ley entrará en vigencia al día siguiente de su publicación en el Diario Oficial El Peruano.



## National Housing Rights Legislation



### Philippines Constitution (1987)

#### Article 13

- (1) Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good. To this end, the State shall regulate the acquisition, ownership, use and disposition of property and its increments.
- (9) The State shall by law, and for the common good, undertake, in co-operation with the private sector, a continuing programme of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centres and resettlement areas. It shall also promote adequate employment opportunity to such citizens. In the implementation of such programs the State shall respect the rights of small property owners.
- (10) Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner. No resettlement of urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be resettled.



## National Housing Rights Legislation



### Philippines

#### Comprehensive & Integrated Shelter Finance Act (1994) (Republic Act 7835)

#### Section 2.

Declaration of Policy: It is hereby declared a policy of the State to undertake, in cooperation with the private sector, a continuing program of urban and land reform and housing which will make available, at affordable cost, decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlements areas.

In recognition of the role of housing as catalyst of economic growth and development, it is hereby declared a state policy to strengthen, promote and support the component activities of housing production and finance.

#### Section 3.

Statement of objectives: Towards this end, the State shall:

- (a) Ensure continuous funding support to vigorously implement the government's programs for urban and rural housing, resettlement, the development of sites and services, and the renewal of blighted areas;
- (b) Enhance the capability of low-income groups to acquire decent and low-cost housing units through the introduction of support mechanisms and facilities which shall render affordable such acquisitions;
- (c) Enjoin the active participation of the local government units in the socialized housing programs through adequate measures for housing development in their respective areas;
- (h) Focus the government's full financial, technical and manpower resources in addressing the shelter needs of the lowest thirty percent (30%) of the population and with the private sector's cooperation, the higher socio-economic percentiles of the our country's population.

#### Section 4.

National Shelter Program Implementation: Consistent with the aforementioned policy and objectives, the Housing and Urban Development Coordinating Council (HUDCC), through the respective agencies, shall intensify the implementation of vital components of the national Shelter Program requiring government budgetary assistance as follows.

- (a) Resettlement Program: This program shall improve land acquisition and site development by the national Housing Authority [NHA] to generate serviced homelots for families displaced from sites earmarked for government infrastructure projects, those occupying danger areas such as water ways, esteros, railroad tracks and those qualified for relocation and resettlement assistance under Republic Act No. 7279. To sustain this program, the NHA shall engage in land banking activities to ensure availability of land.
- (b) Medium-Rise Public and Private Housing: This shall entail the construction of medium-rise residential buildings by the government and/or private developers in all high-density urban areas of the country to maximize the utilization of scarce, high-cost urban land, except in areas where there are existing arrangements on housing and/or land utilization prior to the effectivity of this Act. Low-income families and other beneficiaries as defined under Republic Act No. 7279 shall gain access to the program either through direct sale with homebuyers' financing assistance or through lease arrangement depending on the affordability of the intended beneficiaries.
- (e) Local Housing: To ensure the equitable distribution of housing benefits across the country, the NHA is hereby tasked to implement cost-recoverable socialized housing projects in selected urban and urbanizable areas in all congressional districts. Criteria for the selection of sites shall be formulated by the HUDCC and NHA pursuant to Republic Act No. 7279.



## National Housing Rights Legislation



### Philippines

#### Implementing Rules and Regulations to Ensure the Observance of Proper and Humane Relocation and Resettlement Procedures Mandated by the Urban Development and Housing Act 7279 of 1992

##### Section 4. Eviction and Demolition Pursuant to a Court Order

In cases of eviction and demolition pursuant to a court order involving underprivileged and homeless citizens, relocation shall be undertaken by the local government unit concerned and the National Housing Authority with the assistance of other government agencies within forty-five (45) days from the service of notice of final judgment by the court, after which period the order shall be executed: Provided further, That should relocation not be possible within the said period, financial assistance in the amount equivalent to the prevailing minimum daily wage multiplied by sixty (60) days shall be extended to the affected families by the local government unit concerned.

##### Section 6. Penalty Clause

Any person who violates any provision of R.A. 7279 shall be imposed the penalty of not more than six (6) years of imprisonment or a fine of not less than five thousand pesos (P5,000.00) but not more than one hundred thousand pesos (P100,000) or both at the discretion of the court; Provided, That if the offender is a corporation, partnership, association, or juridical entity, the penalty shall be imposed on the officer or officers of said corporation, partnership, association or juridical entity who caused the violation.

##### Section 7. Venue for Grievance

Complaints of violation of these Implementing Rules and regulations against local government executives shall be filed and prepared in accordance with section 671 of the Local Government Code of 1991 (R.A. 7160), thru the Department of Interior and Local Government.

Complaints against subordinate officials falling with the administrative jurisdiction of the local chief executives shall be filed with the office of the local chief executive concerned who shall cause to institute administrative or judicial proceedings against any subordinate official or employee who may have committed an offense in violation hereof of the Act itself.

In all instances, the aggrieved party may file his complaints directly with a court of competent jurisdiction pursuant to Section 45 of R.A. 7279.



## National Housing Rights Legislation



### Philippines

#### The Urban Development and Housing Act of 1992 (Republic Act No. 7279)

##### Section 2. Declaration of State Policy and Program Objectives:

It shall be the policy of the State to undertake, in cooperation with the private sector, a comprehensive and continuing Urban Development and Housing Program, hereinafter referred to as the Program, which shall:

- (a) Uplift the conditions of the underprivileged and homeless citizens, in urban areas and in resettlements areas by making available to them decent housing at affordable cost, basic services, and employment opportunities;
- (b) Provide for the rational use and development of urban land in order to bring about the following:
  - (1) Equitable utilization of residential lands in urban and urbanizable areas with particular attention to the needs and requirement of the underprivileged and homeless citizens and not merely on the basis market forces;
  - (2) Optimization of the use and productivity of land and urban resources;
  - (3) Development of urban areas conducive to commercial and industrial activities which can generate more economic opportunities for the people;
  - (4) Reduction in urban dysfunctions, particularly those that adversely affect public health, safety and ecology; and
  - (5) Access to land and housing by the underprivileged and homeless citizens;
- (c) Adopt workable policies to regulate and direct urban growth and expansion towards a dispersed urban net and more balanced urban-rural interdependence;
- (d) Provide for an equitable land tenure system that shall guarantee security of tenure to program beneficiaries but shall respect the rights of small property owners and ensure the payment of just compensation;
- (e) Encourage more effective peoples' participation in the urban development process; and
- (f) Improve the capability of local government units in undertaking urban development and housing programs and projects.

##### Section 3. Definition of Terms: For the purposes of this Act:

- (l) "On-site development" refers to the process of upgrading and rehabilitation of blighted and slum urban areas with a view to minimizing displacement of dwellers in said areas, and with provisions for basic services as provided for in Section 21 hereof;  
...
- (n) "Resettlement areas" refers to areas identified by the appropriate national agency or by the local government unit with respect to areas within its jurisdiction, which shall be used for the relocation of the underprivileged and homeless citizens;
- (o) "Security of tenure" refers the degree of protection afforded to qualified Program beneficiaries against infringement or unjust, unreasonable and arbitrary eviction or disposition by virtue of the right of ownership, lease agreement, usufruct and other contractual arrangements.  
...
- (t) "Underprivileged and homeless citizens" refers to the beneficiaries of this Act and to individuals or families residing in urban and urbanizable areas whose income or combined household income falls within the poverty threshold as defined by the National Economic and Development Authority and who do not own housing facilities. This shall include those who live in makeshift dwelling units and do not enjoy security of tenure.  
...

## Chapter II

### Section 7. Inventory of Lands

Within one (1) year from the effectivity of this Act, all city and municipal governments shall conduct an inventory of all lands and improvements thereon within their respective localities.

#### Section 9. Priorities in the Acquisition of Land

Lands for socialized housing shall be acquired in the following order:

- (a) Those owned by the Government or any of its subdivisions, instrumentalities, or agencies, including government-owned or -controlled corporations and their subsidiaries;
- (b) Alienable lands of the public domain;
- (c) Unregistered or abandoned and idle lands;
- (d) Those within the declared Areas for Priority Development, Zonal Improvement Program sites, and Slum Improvement and Resettlement Program sites which have not yet been acquired;
- (e) Bagong Lipunan Improvement of Sites and Services or BLISS sites which have not yet been acquired; and
- (f) Privately-owned lands.

Where on-site development is found more practicable and advantageous to the beneficiaries, the priorities mentioned in this section shall not apply. The local government units shall give budgetary priority to on-site development of government lands.

#### Section 10. Modes of Land Acquisition

The modes of acquiring lands for purposes of this Act shall include, among others, community mortgage, land swapping, land assembly or consolidation, land banking, donation to the Government, joint-venture agreement, negotiated purchase, and expropriation; Provided however, That expropriation shall be resorted to only when other modes of acquisition have been exhausted. Provided further, That where expropriation is resorted to, parcels of land owned by small property owners shall be exempted for purposes of this Act; Provided finally, That abandoned property, as herein defined, shall be reverted and escheated to the State in a proceeding analogous to the procedure laid down in Rule 91 of the Rules of Court.

For the purpose of socialized housing, government-owned and foreclosed properties shall be acquired by the local government units, or by the National Housing Authority primarily through negotiated purchase; Provided, That qualified beneficiaries who are actual occupants of the land shall be given the right of first refusal.

#### Section 11. Expropriation of Idle Lands

All idle lands in urban and urbanizable areas, as defined and identified in accordance with this Act, shall be expropriated and shall form part of the public domain. These lands shall be disposed of or utilized by the Government for such purposes that conform with their land use plans. Expropriation proceedings shall be instigated if, after the lapse of one (1) year following receipt of notice of acquisition, the owner fails to introduce improvements as defined in Section 3 (f) hereof, except in the case of force majeure and other fortuitous events. Exempted from this provision, however, are residential lands owned by small property owners or those the ownership of which is the subject of a pending litigation.

#### Section 14. Limitations on the Disposition of Lands for Socialized Housing

No land for socialized housing, including improvements or rights thereon, shall be sold, alienated, conveyed, encumbered or leased by any beneficiary of this Program except to qualified program beneficiaries as determined by the government agency concerned. ...

#### Section 15. Policy

Socialized housing, as defined in Sec. 3 hereof, shall be the primary strategy in providing shelter for the underprivileged and homeless. However, if the tenurial arrangement in a particular socialized housing program is in the nature of leasehold or usufruct, the same shall be transitory and the beneficiaries must be encouraged to become independent from the Program within a given period of time, to be determined by the implementing agency concerned.

#### Section 18. Balanced Housing Developments

The Program shall include a system to be specified in the Framework plan whereby developers of proposed subdivision projects shall be required to develop an area for socialized housing equivalent to at least twenty percent (20%) of the total subdivision area or total subdivision cost, at the option of the developer, within the same city or municipality, whenever feasible, and in accordance with the standards set by the Housing and Land Use Regulatory Board and other existing laws. ...

## Section 22. Livelihood Component

To the extent feasible, socialized housing and resettlement projects shall be located near areas where employment opportunities are accessible. The government agencies dealing with the development of livelihood programs and grant of livelihood loans shall give priority to the beneficiaries of the program.

## Section 26. Urban Renewal and Resettlement

This shall include the rehabilitation and development of blighted and slum areas and the resettlement of program beneficiaries in accordance with the provision of this Act. On-site development shall be implemented whenever possible in order to ensure minimum movement of occupants of blighted lands and slum areas. The resettlement of the beneficiaries of the program from their existing places of occupancy shall be undertaken only when on-site development is not feasible and after compliance with the procedure laid down in Section 28 of this Act.

## Section 29. Resettlement

Within two (2) years from the effectivity of this Act, the local government units, in coordination with the National Housing Authority, shall implement the relocation and resettlement of persons living in danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and in other public places such as sidewalks, roads, parks, and playgrounds. The local government units, in coordination with the National Housing Authority, shall provide relocation or resettlement sites with basic services and facilities and access to employment and livelihood opportunities sufficient to meet the basic needs of affected families.

## Section 28. Eviction and Demolition

Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:

- (a) When persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, river banks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds;
- (b) When government infrastructure projects with available funding are about to be implemented; or
- (c) When there is a court order for eviction and demolition.

In the execution of eviction or demolition order involving underprivileged and homeless citizens, the following shall be mandatory:

- 1) Notice upon the affected persons or entities at least thirty (30) days prior to the date of eviction or demolition;
- 2) Adequate consultations on the matter of resettlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated;
- 3) Presence of local government officials or their representatives during eviction or demolition;
- 4) Proper identification of all persons taking part in the demolition;
- 5) Execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;
- 6) No use of heavy equipment for demolition except for structures that are permanent and of concrete materials;
- 7) Proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures; and
- 8) Adequate relocation, whether temporary or permanent.

## Section 44. Moratorium on Eviction and Demolition

There shall be a moratorium on the eviction of all Program beneficiaries and on the demolition of their houses or dwelling units for a period of three (3) years from the affectivity of this Act: Provided, That the moratorium shall not apply to those persons who have constructed their structures after the affectivity of this Act and for cases enumerated in Section 28 hereof.



## National Housing Rights Legislation



### **Poland** Constitution (1997)

#### Article 49

The freedom and privacy of communication shall be ensured. Any limitations thereon may be imposed only in cases and in a manner specified by statute.

#### Article 75

- (1) Public authorities shall pursue policies conducive to satisfying the housing needs of citizens, in particular combating homelessness, promoting the development of low-income housing and supporting activities aimed at acquisition of a home by each citizen.
- (2) Protection of the rights of tenants shall be established by statute.





## National Housing Rights Legislation



### Portugal

Constitution (1976, revised 1997)

#### Article 65

##### Housing and urban planning

1. Everyone has the right, both personally and for his or her family, to a dwelling of adequate size, that meets satisfactory standards of hygiene and preserves personal and family privacy.
2. In order to ensure the right to housing, it is the duty of the State to:
  - a. Draw up and implement a policy for housing as a part of general national planning and to support plans for urban areas that guarantee an adequate network of transport and social facilities;
  - b. To promote, in conjunction with local authorities, the construction of economic and social housing;
  - c. Promote private building, when in the public interest, and access to privately owned or rented dwellings.
  - d. Encourage and support the initiatives of local communities for the resolution of their housing problems and for promoting the establishment of housing co-operatives and their own building projects;
3. The State shall adopt a policy for the institution of a system of rents that are compatible with family incomes and for individual ownership of housing.
4. The State, the autonomous regions and the local authorities shall determine the regulations on occupancy, use and transformation of urban land, specifically by way of planning instruments, within the framework of laws relating to national planning and urban planning and shall compulsorily acquire such land as is necessary to satisfy the purposes of urban public utility.
5. Interested parties shall be guaranteed participation in the drawing up of urban planning instruments and any other instruments for physical planning of the territory.

#### Article 72

##### Old age

1. Old people have the right to economic security and to conditions of housing and of family and community life that respect their personal autonomy and prevent or surmount their isolation and marginal position in society.
2. The policy for the old shall also include economic, social and cultural measures that aimed at providing old people with opportunities for self-fulfilment through active participation in the life of the community.



## National Housing Rights Legislation



**Republic of Korea**  
Constitution (1948)

### Article 35

- (3) The State shall endeavour to ensure comfortable housing for all citizens through housing development policies and the like.



## National Housing Rights Legislation



**Republic of Korea**

The Housing Construction Promotion Act (1972)

### Article 1.

The purpose of this act shall be to provide stability to the residential life of citizens who do not own their own homes, to provide for the construction and supply of dwelling units, and to raise housing funds to bring about the purpose of this Act.

### Article 2.

The State shall plan and put into actions measures necessary to ensure the stability and improvement of citizens' residential lives.



## National Housing Rights Legislation



**Republic of Korea**

The Rental Housing Construction Promotion Act (1984)

### Article 1.

The Act aims at defining actions necessary to assure housing for the people by providing for the construction and supply of rental housing.



## National Housing Rights Legislation



### Republic of Korea

#### Residence Lease Protection Act (1981)

[The Residence Lease Protection Act prohibits landlords from evicting tenants by force. Also, this Act mandates just compensation for renters in case of eviction. The Act was recently amended to extend the lease period to two years unless otherwise agreed upon between the two parties. This amendment reduces evictions considerably.] [↗](#)



## National Housing Rights Legislation



### **Romania** Constitution (1991)

#### Article 11 [International Treaties]

- (1) The Romanian State pledges to fulfil as such and in good faith its obligations as deriving from the treaties it is a party to.
- (2) Treaties ratified by Parliament, according to the law, are part of national law.



## National Housing Rights Legislation



### Russian Federation Constitution (1993)

#### Article 25

Dwellings are inviolable. No one is entitled to enter a dwelling against the wishes of the persons residing there except in cases prescribed by federal law or on the basis of a judicial decision.

#### Article 36

- (1) Citizens and their associations are entitled to hold land in private ownership.
- (2) Owners freely possess, utilize and dispose of land and other natural resources provided that this does not damage the environment and does not violate the rights and legitimate interests of others.
- (3) The conditions and procedure for the use of land are defined on the basis of federal law.

#### Article 40

- (1) Each person has the right to housing. No one may be arbitrarily deprived of housing.
- (2) Bodies of State power and bodies of local self-government encourage housing construction and create conditions for the exercise of the right to housing.
- (3) Housing is provided free or at affordable cost to low-income and other citizens indicated in the law who require housing from the state, municipal and other housing stocks in accordance with the norms prescribed by law.



## National Housing Rights Legislation



### Russian Federation

#### Law of the Russian Federation on Basic Principles of Federal Housing Policy Law (1992)

##### Preamble.

Determines basic principles of exercising [the] constitutional right of citizens of the Russian Federation for housing under new social and economic conditions, establishes [the] general basis for legal regulation of housing relationships ... [and] development of diverse forms of property and types of real estate in [the] housing sector.

The goal of federal housing policy is to ensure social guarantees for the right to citizens for housing, to accomplish construction and rehabilitation of state, municipal and private housing stock; to create conditions for the attraction of non-budget sources of financing...; to develop private property, to protect entrepreneurs and owners rights in the housing sector; and to promote competition in construction, repair and maintenance of the housing stock, manufacture of building materials, articles and goods to furnish houses.

##### Article 2.

Citizens of the Russian Federation have the right to housing. This right is exercised through providing residential units in state and municipal housing stock ... with the social norms of residential floor space, as well as through rent, purchase or construction of housing at one's own expense without any limit to floor space.

To citizens who are not provided with housing according to the established norms, the state renders assistance through developing construction of buildings of state and municipal stock intended for providing residential premises under [lease], as well as through the system of compensations (subsidies) and privileges on payment of construction, maintenance and repair of housing.

##### Article 15.

Where the government evicts a tenant in state housing for non-payment of rent or utilities, the government must provide the tenant with alternative living accommodations within the hostel norm.





## National Housing Rights Legislation



### **Russian Federation** The Housing Code (1986)

#### Article 91.

Tenants may be evicted from housing if the building they live in is scheduled for demolition, is deemed uninhabitable, is in danger of collapsing, or is scheduled to be converted to non-residential use.

#### Article 92.

In cases of eviction under these circumstances, the state must provide tenants with alternative living accommodations within the social norms of twelve square meters per person.



## National Housing Rights Legislation



### Rwanda

#### Ministerial Order No. 01/96 of September 23, 1996 Regarding the Temporary Management of Land Property

#### Chapter One: Preliminary Provisions

##### Article 1:

The Commune is bestowed with full authority to ensure on behalf of the government the management of all the land property in rural areas of their jurisdiction that have been abandoned by their owners.

##### Article 2:

Within the framework of the present order, portions of land in rural areas are those that are not located in boundary limits of towns as determined by the decree of April 20, 1979.

The present order concerns land property that is not registered in official documents and has been abandoned by its owners. It does not concern all the land in rural areas which has been registered (in cadastre) or any other land that is normally counted in Government property and has never been allocated (left overs, swamps, military fields, research fields, etc.).

##### Article 3:

Shall be considered as abandoned property:

1. Any land whose owner died without leaving behind his legitimate wife or children;
2. Any land whose owner, his legitimate wife and children are out of the country.

#### Chapter V: Modalities for the Land Owner to be Reinstated in His Rights

##### Article 23:

The land owner, his legitimate wife and children have the full right to have their property returned upon their repatriation.

They shall submit their request to the Bourgmestre where the property is located.

The Bourgmestre shall immediately inform the temporary occupant in writing.

The Secretary to the Commission mentioned in Article 4 of the present Order [Communal Commission] writes the request in an ad hoc register and acknowledges in writing that he received the request.

The ad hoc register shall mention:

1. The identification of the land owner requesting to be reinstated;
2. The date on which the request was handed in to the Secretary of the Commission;
3. Summarized reasons or proofs on which the owner bases his request;
4. The date on which the Commission made the decision, including a summary of the contents of the decision.

##### Article 24:

Requests to be reinstated in ownership rights are examined by the relevant commission within fifteen days from the time the request has reached the Commune Office.

The Commission's decision is communicated to those concerned within seven days after the decision has been made. A copy of the decision is handed to the people concerned.

##### Article 25:

If either party is not satisfied with the Commission's decision, he shall submit his appeal to the Prefet of Prefecture within 8 days after being informed of the decision.

In the event of the Commune Commission's refusal to make a decision within fifteen days after it has received the request, the applicant has seven days to appeal to the Prefet against the refusal to decide.

The Prefet shall make a decision on the appeal not later than one month from the time the appeal was registered at

the Prefecture. If, after one month, no decision has been made by the Prefet or if his decision does not satisfy the person appealing, the latter may submit the case to the judicial authority.

**Article 26:**

A register book shall be held in the Prefet's Secretariat for recording all the appeals regarding decisions made by the Communal Commission responsible for the abandoned land property.

1. The identity of the person appealing;
2. The date on which the appeal was received;
3. A summary of reasons/proofs on which the person bases his appeal;
4. The date on which the appealing person was informed of the decision made by the Commission;
5. The date of the Prefet's decision on the appeal as well as its contents.



## National Housing Rights Legislation



### **Saint Lucia** Constitution (1978)

#### Preamble

Whereas the people of Saint Lucia ...

- (e) Realize that human dignity requires respect for spiritual values; for private family life and property; and the enjoyment of an adequate standard of economic and social well-being dependent upon the resources of the State.



## National Housing Rights Legislation



### Sao Tome and Principe Constitution (1975)

#### Article 48. Housing and Environment

- (1) All have the right to housing and to an environment of human life and the duty to defend it.
- (2) It is incumbent upon the state to plan and execute a housing policy inserted in the plans for zoning of the territory.



## National Housing Rights Legislation



### Senegal Constitution (2001)

#### Preamble

The sovereign people of Senegal ... Affirm: their adherence to the Declaration of Human Rights of 1789 as well as to the international instruments adopted by the United Nations and the Organization of African Unity, in particular the Universal Declaration of Human Rights of 10 December 1948, the Convention on the Elimination of all Forms of Discrimination Against Women of 18 December 1979, the Convention on the Rights of the Child of 20 November 1989 and the African Charter on Human and Peoples' Rights of 27 June 1981;

#### Article 98

Treaties or agreements duly ratified shall, upon their publication, have an authority superior to that of the laws, subject, for each treaty and agreement, to its application by the other party.

#### Article 16

The home shall be inviolable. A house search may not be ordered except by a judge or another authority designated by law. Searches may be conducted only in the form prescribed by these authorities. Measures impairing or restricting the inviolability of the home may be taken only in order to provide against a common danger or to protect persons in danger of death. Such measures may also be taken, pursuant to law, in order to protect public order against impending threat and especially to combat the risks of epidemics or to protect youth in danger.



## National Housing Rights Legislation



### Serbia and Montenegro (Kosovo)

UNMIK Regulation No. 1999/23 (on the establishment of the Housing and Property Directorate and the Housing and Property Claims Commission) (15 November 1999)

The Special Representative of the Secretary-General,

Hereby promulgates the following:

#### Section 1 – Housing and Property Directorate

1. The Housing and Property Directorate (the “Directorate”) shall provide overall direction on property rights in Kosovo until the Special Representative of the Secretary-General determines that local governmental institutions are able to carry out the functions entrusted to the Directorate, in particular, the Directorate shall:
  - a. Conduct an inventory of abandoned private, state and socially owned housing;
  - b. Supervise the utilization or rental of such abandoned property on a temporary basis for humanitarian purposes; rental monies of abandoned private and socially owned property shall be recorded in a separate account in trust for the rightful owner, subject to deduction of relevant expenses;
  - c. Provide guidance to UNMIK, including CIVPOL, and UNHCR, as well as KFOR on specific issues related to property rights; and
  - d. Conduct research leading to recommended policies and legislation concerning property rights.
2. As an exception to the jurisdiction of the local courts, the Directorate shall receive and register the following categories of claims concerning residential property including associated property:
  - a. Claims by natural persons whose ownership, possession or occupancy rights to residential real property have been revoked subsequent to 23 March 1989 on the basis of legislation which is discriminatory in its application or intent;
  - b. Claims by natural persons who entered into informal transactions of residential real property on the basis of the free will of the parties subsequent to 23 March 1989;
  - c. Claims by natural persons who were the owners, possessors or occupancy right holders of residential real property prior to 24 March 1999 and who do not now enjoy possession of the property, and where the property has not voluntarily been transferred.

The Directorate shall refer these claims to the Housing and Property Claims Commission for resolution or, if appropriate, seek to mediate such disputes and, if not successful, refer them to the Housing and Property Claims Commission for resolution.

#### Section 2 – Housing and Property Claims Commission

1. The Housing and Property Claims Commission (the “Commission”) is an independent organ of the Directorate which shall settle private non-commercial disputes concerning residential property referred to it by the Directorate until the Special Representative of the Secretary-General determines that local courts are able to carry out the functions entrusted to the Commission.
2. The Commission shall initially be composed of one Panel of two international and one local members, all of whom shall be experts in the field of housing and property law and competent to hold judicial office. The Special Representative of the Secretary-General shall appoint the members of the Panel and shall designate one member as the chairperson. The Special Representative of the Secretary-General may establish additional Panels of the Commission in consultation with the Commission.
3. Before taking office, the members of the Commission shall make in writing the following solemn declaration:

“I solemnly declare that I will perform my duties and exercise my power as a member of the Housing and Property Claims Commission honourably, faithfully, impartially and conscientiously.”

The declaration shall be put in the archives of the Commission.
4. The Commission shall be entitled to free access to any and all records in Kosovo relevant to the settlement of a dispute submitted to it.
5. As an exception to the jurisdiction of local courts, the Commission shall have exclusive jurisdiction to settle

the categories of claims listed in section 1.2 of the present regulation. Nevertheless, the Commission may refer specific separate parts of such claims to the local courts or administrative organs, if the adjudication of those separate parts does not raise the issues listed in section 1.2. Pending investigation or resolution of a claim, the Commission may issue provisional measures of protection.

6. The Special Representative of the Secretary-General shall establish by regulation the Rules of Procedure and Evidence of the Commission, upon the recommendation of the Commission. Such rules shall guarantee fair and impartial proceedings in accordance with internationally recognized human rights standards. In particular, such rules shall include provisions on reconsideration of decision of the Commission.
7. Final decisions of the Commission are binding and enforceable, and are not subject to review by any other judicial or administrative authority in Kosovo.

#### Executive Director and Staff

The Special Representative of the Secretary-General shall appoint an Executive Director of the Directorate after consultation with the Executive Director of the United Nations Centre for Human Settlements (UNCHS) (Habitat). The Executive Director shall appoint the staff of the Directorate, which shall comprise local experts, and shall allocate staff to the Commission who shall be under the exclusive control of the Commission.

#### Applicable Law

The provisions of the applicable laws relating to property rights shall apply subject to the provisions of the present regulation.





## National Housing Rights Legislation



### **Seychelles** Constitution (1993)

#### Article 34

The State recognizes the right of every citizen to adequate and decent shelter conducive to health and well-being and undertakes either directly or through or with the co-operation of public or private organizations to facilitate the effective realization of this right.



## National Housing Rights Legislation



### Slovakia Constitution (1992)

#### Article 20

- (1) Everyone has the right to own property. Property rights of all owners shall be uniformly construed and equally protected by law. The right of inheritance is guaranteed.
- (2) For the purposes of safeguarding the needs of the society, the interests of the general public, and the advancement of the national economy, the law shall establish certain property, (including that defined in article 4) as the exclusive property of the State, the municipality or specific corporate bodies. In addition, the law can specify property which may be owned only by individual citizens or corporations residing in the Slovak Republic.
- (3) Ownership limits. Property may not be misused to cause injury to another person or in contradiction to the public interests protected by law. The exercise of property rights must not be detrimental to the health of other people, wild life, cultural sites or the environment beyond the standards fixed by law.
- (4) Expropriation or restrictions on property rights shall be imposed only to the extent legally justified for the protection of the public interest and shall be justly compensated.

#### Article 21 [Inviolability of the Home]:

- (1) A person's home is inviolable. It must not be entered without the resident's consent.
- (2) A house search is admissible only in connection with criminal proceedings and only on the basis of the judge's written and substantiated order. The method of carrying out a house search will be set out in a law.
- (3) Other infringements upon the inviolability of one's home can be permitted by law only if this is inevitable in a democratic society in order to protect people's lives, health, or property, to protect the rights and liberties of others, or to ward off a serious threat to public order. If the home is used also for business or to perform some other economic activity, such infringements can be permitted by law also when this is unavoidable in meeting the tasks of public administration.

#### Article 39

- (1) Citizens shall be entitled to adequate material security in their old age, as well as in cases of disability, and death of the family's principal provider.
- (2) Any person suffering material hardship, shall have the right to such assistance as may be necessary to secure his or her fundamental standard of life.
- (3) Further details of rights defined in sections (1) and (2) of this Article shall be provided by law.

#### Article 11 [Human Rights]

International treaties on human rights and basic liberties that were ratified by the Slovak Republic and promulgated in a manner determined by law take precedence over its own laws, provided that they secure a greater extent of constitutional rights and liberties.



## National Housing Rights Legislation



**Slovenia**  
Constitution (1991)

### Article 78

The State shall create the conditions necessary to enable each citizen to obtain proper housing.



## National Housing Rights Legislation



### Slovenia

#### Denationalization Law (1991, amended 1998)

[A person's rights to receive returned property are spelled out in the 1991 Denationalization Law, as amended in 1998. Slovenia's Constitutional Court emphasized that the purpose of the law is to correct injustices perpetrated by the state against property owners after the Second World War. The law does not cancel the nationalization legislation. For economic and political reasons, the Denationalization Law does not seek to restore the country to the pre-Second World War status quo regarding property, but to correct injustices - sometimes with cash compensation. Anyone whose property was nationalized may apply for redress. The government determines how much compensation is due, and whether it should be given in the form of physical property or money. These decisions are made on a case-by-case basis, and take into account such factors as the public interest, agricultural activity of the claimant and the means of acquisition.]



## National Housing Rights Legislation



### South Africa Constitution (1996)

#### Article 14. Privacy

Everyone has the right to privacy, which includes the right not to have their person or home searched;

#### Article 25. Property

- (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
- (2) Property may be expropriated only in terms of law of general application for a public purpose or in the public interest; and subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
- (3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including the current use of the property; the history of the acquisition and use of the property; the market value of the property; the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and the purpose of the expropriation.
- (4) For the purposes of this section the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and property is not limited to land.
- (5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
- (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
- (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
- (8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).
- (9) Parliament must enact the legislation referred to in subsection (6).

#### Article 26. Housing

- (1) Everyone has the right to have access to adequate housing.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

#### Article 27. Health care, food, water and social security

- (1) Everyone has the right to have access to health care services, including reproductive health care;
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
- (3) No one may be refused emergency medical treatment.

#### Article 28. Children

- (1) Every child has the right to ... shelter....
- (2) A child's best interests are of paramount importance in every matter concerning the child.

(3) In this section “child” means a person under the age of 18 years.



## National Housing Rights Legislation



### South Africa

#### Land Reform (Labour Tenants) Bill B94-95

##### Article 2. Deprivation of informal rights to land

- (1) Subject to the provisions of subsection (2), and the provisions of the Expropriation Act, 1975 (Act No. 63 of 1975), no person may be deprived of any informal right to land without his or her consent.
- (2) Where land is used on a communal basis, an informal right to such land may be disposed of in accordance with the custom and usage of that community: Provided that such custom and usage shall be deemed to include the principle that a decision to dispose of any such right may only be taken by a majority of the holders of such rights present or represented at a meeting convened for the purpose of considering such disposal and of which they have been given sufficient notice, and in which they have had a reasonable opportunity to participate.



## National Housing Rights Legislation



### South Africa

#### Restitution of Land Rights Act (1994) (Act No. 16106)

Act: To provide for the restitution of rights in land in respect of which persons or communities were dispossessed under or for the purpose of furthering the objects of any racially based discriminatory law; to establish a Commission on Restitution of Land Rights and a Land Claims Court; and to provide for matters connected therewith.

Whereas the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), provides for the restitution of a right in land to a person or community dispossessed under or for the purpose of furthering the objects of any racially based discriminatory law;

And Whereas legislation for this purpose is to be designed to promote the protection and advancement of persons, groups or categories of person disadvantaged by unfair discrimination, in order to promote their full and equal enjoyment of rights in land:

#### Section 2. Enforcement of claim for restitution

- (1) A person shall be entitled to enforce restitution of a right in land if -
  - (a) he or she is a person or community contemplated in section 121(2) of the Constitution or a direct descendant of such a person; and
  - (b) the claim for such restitution is lodged within three years after a date fixed by the Minister by notice in the Gazette.
- (2) The date contemplated in subsection (1), shall be a date not earlier than the earliest of the dates contemplated in section 43.
- (3) The date contemplated in section 121(2)(a) of the Constitution is 19 June 1913.

#### Section 3. Claims against nominees

Subject to the provisions of this Act a person shall be entitled to claim land title in land if such claimant or his, her or its antecedent -

- (a) was prevented from obtaining or retaining title to the claimed land because of a law which would have been inconsistent with the prohibition of racial discrimination contained in section 8(2) of the Constitution had that subsection been in operation at the relevant time; and
- (b) proves that the registered owner of the land holds title as a result of a transaction between such registered owner or his, her or its antecedents and the claimant or his, her or its antecedents, in terms of which such registered owner or his her or its antecedents held the land on behalf of the claimant or his, her or its antecedents.

#### Section 4. Establishment of Commission on Restitution of Land Rights

- (1) There is hereby established a commission to be known as the Commission on Restitution of Land Rights.

#### Section 10. Lodgement of claims

- (1) Any person or the representative of any community who is of the opinion that he or she or the community which he or she represents is entitled to claim restitution of a right in land as contemplated in section 121 of the Constitution, may lodge such claim, which shall include a description of the land in question, and the nature of the right being claimed, on the form prescribed for this purpose by the Chief Land Claims Commissioner under section 16.

#### Section 22. Land Claims Court

- (1) There shall be a court of law to be known as the Land Claims Court which, in addition to the powers contemplated in section 123 of the Constitution, shall have the power -
  - (a) to determine restitution of any right in land in accordance with this Act;
  - (b) to determine compensation in terms of this Act;
  - (c) in respect of a claim in terms of section 3, to determine the person entitled to ownership;



(d) to determine all other matters which require to be determined in terms of sections 121, 122 and 123 of the Constitution.

(2) The Court shall have jurisdiction throughout the Republic and shall have all the ancillary powers necessary or reasonably incidental to the performance of its functions, including the power to grant interlocutory orders and interdicts. ...

### Section 33. Factors to be taken in account by court

In considering its decision in any particular matter, excluding the review of a decision in terms of section 15, the Court shall, in addition to the matters referred to in section 121, 122 and 123 of the Constitution, have regard to the following factors:

- (a) The desirability of providing for restitution of rights in land or compensation to people who were dispossessed of their rights in land as a result of or in pursuance of racially based discriminatory laws;
- (b) the desirability of remedying past violations of human rights;
- (c) the requirements of equity and justice;
- (d) the desirability of avoiding major social disruption;
- (e) any provision which already exists, in respect of the land in question in any matter, for that land to be dealt with in a manner which is designed to achieve the goals contemplated in section 8(3)(a) of the Constitution;
- (f) any other factor which the Court may consider relevant and consistent with the spirit and objects of the Constitution and in particular the provisions of section 8 of the Constitution.



## National Housing Rights Legislation



### Spain Constitution (1978)

#### Art. 47

All Spaniards have the right to enjoy decent and adequate housing. The authorities shall promote the conditions necessary and establish pertinent norms to make this right effective, regulating the use of land in accordance with the general interest to prevent speculation. The community shall share in the increased values generated by urban activities of public bodies.

#### Art. 148

- (1) The Autonomous Communities can obtain competence in the following areas: ...
  - (3a) Regulation of land, urbanisation and housing.



## National Housing Rights Legislation



### **Sri Lanka** Constitution (1977)

#### Article 27

The State is pledged to establish in Sri Lanka a democratic socialist society, the objectives of which includes:

- (2) (c) The realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities.



## National Housing Rights Legislation



### Sudan The Civil Code (1984)

[Article 560(1) stipulates that anyone who reclaims derelict land by building thereon is more entitled to it than others.

Article 560(2) stipulates that anyone who reclaims derelict land for essential construction purposes is the most entitled to benefit therefrom. However, at locations where development is planned and regulated, construction is not permitted in certain zones designated by the competent authority, and irregular development activities are prohibited, without the consent of the authority. Such zones must be demarcated in a clear and unequivocal manner and must pay due regard to the right of citizens to essential housing, as well as the State's obligation to promote orderly construction in accordance with a carefully studied plan.

Article 560(3) stipulates that a registered usufruct is like registered title to property and cannot be expropriated except in the public interest and in return for fair compensation depending on the type of usufruct and the real extent of its exploitation.

Article 560(4) stipulates that a usufruct which is deemed to be legitimate in accordance with the provisions of the Code, even if unregistered, is protected by law, within the limits of the actual use, and cannot be expropriated except in the public interest and in return for fair compensation.

Article 560(6) stipulates that, for purposes of the regulation and exploitation of land use, the central or regional authorities or the authorities at the national capital, as appropriate, shall take measures to demarcate, survey, level and register land, which they shall be empowered to divide into plots of equal or differing areas for uses that be regulated in a manner conducive to the assurance of a decent life for the population of each district and also for the holders of legitimate usufructs.

Article 561(b) grants usufructs in respect to agricultural land in order to encourage low-income families to settle and exploit the land for the benefit of the family or in the public interest.

Article 563 grants usufructs in respect of land and residential property on the following conditions:

- (a) The family must benefit whenever possible and feasible;
- (b) A usufruct granted in respect of residential land should not be less than 200m<sup>2</sup> in urban areas or 400m<sup>2</sup> in villages and rural areas.
- (c) Housing should preferably be situated in salubrious areas characterized by their clean air and natural environment befitting human life.] [\[10\]](#)



## National Housing Rights Legislation



**Sudan**

Constituent Assembly Procedure Regulations (1987)

### Article 25.

The right of ownership shall be guaranteed to citizens and associations as organized by law and such property as organized by law and shall not be acquired or appropriated save for public interest and in consideration of fair compensation.

### Article 30.

Residences shall be inviolable and shall not be searched or entered save with the consent of their occupants and as in such conditions and procedures as may be specified by law.

### Article 44.

The Housing Committee is concerned with the following:

- (1) Study of national plans in the field of housing and building planning and investment in real estate;
- (2) Consideration of the legislation relating to housing and land distribution;
- (3) Discussion of problems relating to the phenomenon of illegal dwellings and the negative results of that and finding solutions and alternatives for the same.



## National Housing Rights Legislation



### Sudan

#### Decree 941 (May 1990)

[Decree 941 is Sudan's official law for dealing with internally displaced persons. Decree 941 provides some elements of due process with respect to forced evictions, including adequate notice, as well as requiring the provision of alternative accommodations with adequate services.]



## National Housing Rights Legislation



**Suriname**  
Constitution (1987)

### Article 49

A housing plan shall be determined by law, aimed at the procurement of a sufficient number of affordable houses and state control of the use of real estate for public housing.



## National Housing Rights Legislation



**Sweden**  
Constitution (1978)

### Art. 2, Sec. 1

The personal, economic and cultural welfare of the individual shall be fundamental aims of the activities of the community. In particular, it shall be incumbent upon the community to secure the right to work, to housing and to education and to promote social care and security, as well as a favourable living environment.





## National Housing Rights Legislation



### Sweden Swedish Rent Law

#### Section 2.

The rent agreement shall be established in writing, if the landlord or the tenant asks for it.

If the rent agreement is established in writing and someone with legality replaces the tenant, then this should be noted on the rent agreement if asked for.

#### Section 10.

The rent agreement becomes invalid if the apartment before the take over day becomes so destroyed that it cannot be used for the designated purpose. If the landlord is responsible for the incident or if he does not without delay leave the tenant a message about it, then the tenant has the right to compensation for damage.

If a public authority before the take over day issues a statement prohibiting the apartment to be used as a residence because the apartment's condition render the designated purpose, then the rent agreement ceases to exist, even if the decision has not yet obtained legal force. The tenant has the right to compensation for damage, if the condition that has preceded the decision derives from neglect from the landlord or if he does not without delay leave the tenant a message about the authority's decision.

#### Section 11.

If minor damage than what is stated in Section 10, first paragraph occurs on the apartment before the tenancy begins and the damage is not fixed when the apartment shall be taken over, or in other cases than what is stated in Section 13, the apartment on the take over day is not in the condition that the tenant has the right to demand, then can the tenant fix the damage on the landlord's account, if the landlord fails, after being told to fix the reparation as soon as it can be done. If the damage can not be repaired without delay or the landlord after being informed neglects to fix the damage as soon as possible, the tenant has the right to terminate the rent agreement. Termination can only be done if the damage is of considerable importance. After the damage has been repaired by the landlord the rent agreement can not be terminated. During the time period the apartment is imperfect, the tenant has the right to reasonable lowering of the rent.

The tenant has also the right to compensation for damage in cases that refers to the first paragraph, if the landlord can not show that the damage does not depend on his neglect.

The first and second paragraphs are also in force if an apartment for recreational purposes or for premises has been rented out in existing condition and it is not according to the local district's common understanding fully useful for its purpose and the tenant did not know about the damage when the lease was established or could not detect it through general observation.

#### Section 12.

If a public authority before the take over day issues a statement that restricts the tenant from using certain areas of the apartment because of the condition of those areas, or that the tenant in some other way will suffer in his right to use the apartment, then he has right to reasonable lowering of the rent. If the verdict affects a significant part of the right to use the apartment, then the tenant has the right to terminate the rent agreement even if the verdict does not yet have legal force. Section 10, second paragraph, second sentence applies to questions concerning compensation for damage.

#### Section 13.

If the rent agreement is for an apartment that was not completed when the rent agreement was established and if the apartment is still not ready when the take over date comes, the tenant has the right to reasonable lowering of the rent and the same right to terminate the rent agreement that is referred to in Section 11. Termination can be made before the agreed take over day, if it is obvious that the apartment will not be ready for the intended purpose.

The tenant has also right to compensation for damage, if the landlord does not show that the delay is not caused by his neglect.

#### Section 16.

The regulations in Sections 10-12, are also in force if,

- (1) the apartment is damaged during tenancy and the tenant is not responsible for the damage,
- (2) the landlord does not fulfill his responsibility for maintenance according to Section 15, the second paragraph.
- (3) hindrance or damage in the right to use the apartment in some other way occurs and it is not caused by the tenant, or
- (4) a public authority during the tenancy issues a statement according to Section 10, second paragraph or Section 12, and it is not caused by the tenant, however the regulations are not in force until the decision has been a guide.

If the rent agreement is for a tenement, the rent tribunal is allowed to impose a commandment to action upon the landlord so that he corrects the damage for cases that are discussed in first paragraph 1-3 or when the landlord does not fulfill his duty of maintenance referred to in Section 15, third paragraph and the tenant has submitted a petition for correction to be imposed.

The commandment to action which can be combined with a fine, shall state a specific time period under which the damage pointed out in the commandment to action shall have been corrected. The time period can be extended if specific circumstances exist and a request is made before the expiration date.

The landlord and the tenant can with binding effect enter an agreement that restricts the rights according to the first paragraph when hindrance or suffering in the use occurs because the landlord has arrangement for work to be done so that the apartment is restored to the condition agreement upon or so that customary maintenance of the apartment or the real estate in general or other work can be done that is stated in the agreement.

Petition for commandment to action can be directed toward the person who last has been granted or sought legal ratification of the property, even if this person has conveyed the real estate before the petition is made.

If the real estate is conveyed after the petition is made or if cases exist according to the fourth paragraph, then the Rules of the Courts regulations are in force and the object of dispute is transferred with a third party participation in a trial.

If a dispute regarding ownership is noticed in the land register a petition of commandment to action can be directed toward the party that possesses the real estate with claim of ownership.



## National Housing Rights Legislation



### Switzerland Constitution (1874)

#### Article 34(6).

1. The Confederation shall take measures aimed at encouraging the construction of housing, especially through a lowering of costs, and providing the opportunity for owning a dwelling or house. Federal legislation shall determine the conditions for giving assistance grants.
2. The Confederation shall have the following particular powers:
  - (a) to facilitate the obtaining and development of sites for housing construction;
  - (b) to support efforts aimed at improving housing and environmental conditions for families, persons with limited earning capacity, the elderly, the disabled, and persons in care;
  - (c) to research into the housing market and into building methods, and to encourage rationalization in building; and
  - (d) to ensure that capital is obtained for housing construction.
3. The Confederation is authorised to decree the necessary legal provisions for the development of sites intended for housing construction, as well as for rationalization in building.
4. Insofar as the nature of these measures exceeds the powers of the Confederation alone, the Cantons shall be called on to help carry them out.
5. The Cantons and other interested groups shall be consulted during the drafting of implementing legislation.



## National Housing Rights Legislation



### Syrian Arab Republic Constitution (1973)

[Article 31 \[Home\]](#)

Homes are inviolable. They may not be entered or searched except under conditions specified by law.



## National Housing Rights Legislation



### Tajikistan

#### The Law of the Republic of Tajikistan on Forced Migrants (20 July 1994)

##### Article 11 - Safeguarding Security of the Forced Migrants on Their to Places of Permanent Residence

Organs of State power and administration are obliged to safeguard the security of the forced migrants on their return to their places of permanent residences as well as observation of their rights and lawful interests.

##### Article 12 - the Rights of Forced Migrants Upon Arrival in their Places of Permanent Residence

A forced migrant, after return to his place of permanent residence, has the right to:

- repossess the personal and real estate left by him under the circumstances foreseen by the Article 1 of the present law;
- receive a lump sum allowance or other cash benefit, the sum of which is determined by the Council of Ministers of the Republic of Tajikistan;
- receive credit on preferential terms to reconstruct and build new houses and outbuildings to replace what has been destroyed;

##### Article 13 - The Fund of Assistance to Forced Migrants

To ensure favourable material conditions and compensation of expenses on accommodation at new permanent places of residence in the territory of the Republic of Tajikistan and at the places of previous residence the Fund of Assistance to Forced migrants hereby is established within the Central Refugee Department of the Ministry of Labour and Employment of Population of the Republic of Tajikistan.

The Fund shall be formed on the basis of receipts from the State Budget of the Republic of Tajikistan, other states and international organizations on the basis of agreements and other documents concluded by the Republic of Tajikistan, receipts from province, town and district budgets, voluntary donations on the part of domestic and foreign enterprises, public organisations and individual persons.

##### Article 14 - Sources of Compensation of Expenses of Reception and Accommodation of Forced Migrants

Expenses on the part of the local State power and administration organs connected with reception and accommodation of forced migrants on their territory shall be reimbursed from republican budget of the Republic of Tajikistan and the fund of Assistance within the Central Refugee Department of the Ministry of Labour and Employment of Population of the Republic of Tajikistan.



## National Housing Rights Legislation



### Tajikistan

#### Resolution No. 542 of 22 August 1995 on Additional Measures Facilitating the Return of Refugees-Citizens of the Republic of Tajikistan and Forced Migrants to the Places of Permanent Residence and Their Social and Legal Protection

With the aim of activating efforts on returning refugees-citizens of the Republic of Tajikistan and forced migrants to the places of permanent residence, strengthening their social and legal protection and in accordance with the statement of the government delegation of the Republic of Tajikistan on the results of the fourth round of inter-Tajik talks in Almaty, the Government of the Republic of Tajikistan resolves;

1. The ministries departments of the Republic of Tajikistan, heads of oblasts, cities and rayons of the Republic of Tajikistan shall intensify the work of the organized return of the refugees and forced migrants to the places of permanent residence and their social and legal protection.
2. With the aim of efficiently solving the questions arising in connection with the return of refugees - citizens of the Republic of Tajikistan and forced migrants to the places of permanent residence, their social and legal protection a government commission shall be set up in accordance with the supplement.
4. With the aim of facilitating the earliest social and economic adaptation of the refugees-citizens of the Republic of Tajikistan and forced migrants returned to the places of permanent residence, the Ministry of Internal Affairs of the Republic of Tajikistan, hukumats of oblasts, cities and rayons of the Republic of Tajikistan in common with the agencies of the Procurator's Office of the Republic of Tajikistan shall:
  - immediately vacate illegally occupied dwellings owned or rented by the refugees-citizens of the Republic of Tajikistan and forced migrants in houses belonging to the State or communal housing fund and pass them to their rightful owners;
  - in case of the destruction or loss of the State-owned dwelling, provide out of turn an available dwelling space at his whereabouts in conformity with the standards in force in the Republic. According to the wish of the victims, in return for the dwelling, allot them a land plot for the construction of a dwelling house or give them a right to join a building cooperative out of turn.
6. The State Committee of the Republic of Tajikistan on Contracts and Trade, the Board of Tajikmatlubot shall provide persons from among refugees-citizens of the Republic of Tajikistan and forced migrants and forced migrants building their own houses with main types of building materials in the first instance according to the claims of thukumats.



## National Housing Rights Legislation



### Tajikistan

#### Special Law on the Return of Illegally Occupied Houses

[This law deals with housing that was illegally occupied during the conflict between the Government of Tajikistan and the United Tajik Opposition, which concluded with the signing of a Peace Accord in June 1997.]



## National Housing Rights Legislation



### **Tonga** Constitution (1875)

#### Article 16

It shall not be lawful for anyone to enter forcibly the houses or premises of another or to search for anything or to take anything the property of another except according to law: And should any person lose any property and believe it to be concealed in any place whether house or premises it shall be lawful for him to make an affidavit before a magistrate that he believes it to be concealed in that place and he shall describe particularly the property so concealed and the place in which he believes it to be concealed and the magistrate shall issue a search warrant to the police to search for the property according to the affidavit so made. (Amended by Act 7 of 1967.)





## National Housing Rights Legislation



**Turkey**  
Constitution (1982)

### Article 56

Everyone has the right to live in a healthy and stable environment.<sup>(78)</sup>

### Article 57

The State shall take measures to meet the needs for housing, within the framework of a plan which takes into account the characteristics of cities and environmental conditions and supports community housing projects.



## National Housing Rights Legislation



### Uganda Land Act of 1998

#### Sec. 32

- (1) Any decision taken in respect of land held under customary tenure, whether in respect of land held individually or communally shall be in accordance with the custom, traditions and practices of the community, except that a decision which denies women or children or persons with disability access to ownership, occupation or use of any land or imposes conditions which violate articles 33, 34 or 35 of the Constitution on any ownership, occupation or use of any land shall be null and void. [\(a\)](#)



## National Housing Rights Legislation



### Ukraine Constitution (1996)

#### Article 47

- (1) Everyone has the right to housing. The State creates conditions that enable every citizen to build, purchase as property, or to rent housing.
- (2) Citizens in need of social protection are provided with housing by the State and bodies of local self-government, free of charge or at a price affordable for them, in accordance with the law.
- (3) No one shall be forcibly deprived of housing other than on the basis of the law pursuant to a court decision.

#### Article 48

- (1) Everyone has the right to a standard of living sufficient for himself or herself and his or her family that includes adequate nutrition, clothing and housing.

#### Article 55

- (1) Human and citizens' rights and freedoms [including the right to housing enumerating in Articles 47 and 48 of the Constitution] are protected by the court.
- (2) Everyone is guaranteed the right to challenge in court the decisions, actions or omission of bodies of state power, bodies of local self-government, officials and officers.
- (3) Everyone has the right to appeal for the protection of his or her rights to the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine.
- (4) After exhausting all domestic legal remedies, everyone has the right to appeal for the protection of his or her rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organisations of which Ukraine is a member or participant.
- (5) Everyone has the right to protect his or her rights and freedoms from violations and illegal encroachments by any means not prohibited by law.

#### Article 56

- (1) Everyone has the right to compensation, at the expense of the State or bodies of local self-government, for material and moral damages inflicted by unlawful decisions, actions or omission of bodies of state power, bodies of local self-government, their officials and officers during the exercise of their authority.



## National Housing Rights Legislation



### United Kingdom

#### Homeless Persons Act (1977, as amended by the Housing Act of 1996)

#### PART VII: Homelessness

##### *Homelessness and threatened homelessness*

175.

- (1) A person is homeless if he has no accommodation available for his occupation, in the United Kingdom or elsewhere, which he-
  - (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,
  - (b) has an express or implied licence to occupy, or
  - (c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.
- (2) A person is also homeless if he has accommodation but-
  - (a) he cannot secure entry to it, or
  - (b) it consists of a moveable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it.
- (3) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.
- (4) A person is threatened with homelessness if it is likely that he will become homeless within 28 days.

176.

Accommodation shall be regarded as available for a person's occupation only if it is available for occupation by him together with-

- (a) any other person who normally resides with him as a member of his family, or
- (b) any other person who might reasonably be expected to reside with him.

References in this Part to securing that accommodation is available for a person's occupation shall be construed accordingly.

177.

- (1) It is not reasonable for a person to continue to occupy accommodation if it is probable that this will lead to domestic violence against him, or against-
  - (a) a person who normally resides with him as a member of his family, or
  - (b) any other person who might reasonably be expected to reside with him.

For this purpose "domestic violence", in relation to a person, means violence from a person with whom he is associated, or threats of violence from such a person which are likely to be carried out.

- (2) In determining whether it would be, or would have been, reasonable for a person to continue to occupy accommodation, regard may be had to the general circumstances prevailing in relation to housing in the district of the local housing authority to whom he has applied for accommodation or for assistance in obtaining accommodation.
- (3) The Secretary of State may by order specify-
  - (a) other circumstances in which it is to be regarded as reasonable or not reasonable for a person to continue to occupy accommodation, and
  - (b) other matters to be taken into account or disregarded in determining whether it would be, or would have been, reasonable for a person to continue to occupy accommodation.

178.

- (1) For the purposes of this Part, a person is associated with another person if-
- (a) they are or have been married to each other;
  - (b) they are cohabitants or former cohabitants;
  - (c) they live or have lived in the same household;
  - (d) they are relatives;
  - (e) they have agreed to marry one another (whether or not that agreement has been terminated);
  - (f) in relation to a child, each of them is a parent of the child or has, or has had, parental responsibility for the child.
- (2) If a child has been adopted or has been freed for adoption by virtue of any of the enactments mentioned in section 16(1) of the Adoption Act 1976, two persons are also associated with each other for the purposes of this Part if-
- (a) one is a natural parent of the child or a parent of such a natural parent, and
  - (b) the other is the child or a person-
    - (i) who has become a parent of the child by virtue of an adoption order or who has applied for an adoption order, or
    - (ii) with whom the child has at any time been placed for adoption.
- (3) In this section-
- "adoption order" has the meaning given by section 72(1) of the Adoption Act 1976;
  - "child" means a person under the age of 18 years;
  - "cohabitants" means a man and a woman who, although not married to each other, are living together as husband and wife, and "former cohabitants" shall be construed accordingly;
  - "parental responsibility" has the same meaning as in the Children Act 1989; and
  - "relative", in relation to a person, means-
    - (a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson or granddaughter of that person or of that person's spouse or former spouse, or
    - (b) the brother, sister, uncle, aunt, niece or nephew (whether of the full blood or of the half blood or by affinity) of that person or of that person's spouse or former spouse,
- and includes, in relation to a person who is living or has lived with another person as husband and wife, a person who would fall within paragraph (a) or (b) if the parties were married to each other.

*General functions in relation to homelessness or threatened homelessness*

179.

- (1) Every local housing authority shall secure that advice and information about homelessness, and the prevention of homelessness, is available free of charge to any person in their district.
- (2) The authority may give to any person by whom such advice and information is provided on behalf of the authority assistance by way of grant or loan.
- (3) A local housing authority may also assist any such person-
  - (a) by permitting him to use premises belonging to the authority,
  - (b) by making available furniture or other goods, whether by way of gift, loan or otherwise, and
  - (c) by making available the services of staff employed by the authority.

180.

- (1) The Secretary of State or a local housing authority may give assistance by way of grant or loan to voluntary organisations concerned with homelessness or matters relating to homelessness.
- (2) A local housing authority may also assist any such organisation-
  - (a) by permitting them to use premises belonging to the authority,

- (b) by making available furniture or other goods, whether by way of gift, loan or otherwise, and
  - (c) by making available the services of staff employed by the authority.
- (3) A "voluntary organisation" means a body (other than a public or local authority) whose activities are not carried on for profit.

181.

- (1) This section has effect as to the terms and conditions on which assistance is given under section 179 or 180.
- (2) Assistance shall be on such terms, and subject to such conditions, as the person giving the assistance may determine.
- (3) No assistance shall be given unless the person to whom it is given undertakes-
  - (a) to use the money, furniture or other goods or premises for a specified purpose, and
  - (b) to provide such information as may reasonably be required as to the manner in which the assistance is being used.

The person giving the assistance may require such information by notice in writing, which shall be complied with within 21 days beginning with the date on which the notice is served.

- (4) The conditions subject to which assistance is given shall in all cases include conditions requiring the person to whom the assistance is given-
  - (a) to keep proper books of account and have them audited in such manner as may be specified,
  - (b) to keep records indicating how he has used the money, furniture or other goods or premises, and
  - (c) to submit the books of account and records for inspection by the person giving the assistance.
- (5) If it appears to the person giving the assistance that the person to whom it was given has failed to carry out his undertaking as to the purpose for which the assistance was to be used, he shall take all reasonable steps to recover from that person an amount equal to the amount of the assistance.
- (6) He must first serve on the person to whom the assistance was given a notice specifying the amount which in his opinion is recoverable and the basis on which that amount has been calculated.

182.

- (1) In the exercise of their functions relating to homelessness and the prevention of homelessness, a local housing authority or social services authority shall have regard to such guidance as may from time to time be given by the Secretary of State.
- (2) The Secretary of State may give guidance either generally or to specified descriptions of authorities.

*Application for assistance in case of homelessness or threatened homelessness*

183.

- (1) The following provisions of this Part apply where a person applies to a local housing authority for accommodation, or for assistance in obtaining accommodation, and the authority have reason to believe that he is or may be homeless or threatened with homelessness.
- (2) In this Part-
  - "applicant" means a person making such an application,
  - "assistance under this Part" means the benefit of any function under the following provisions of this Part relating to accommodation or assistance in obtaining accommodation, and
  - "eligible for assistance" means not excluded from such assistance by section 185 (persons from abroad not eligible for housing assistance) or section 186 (asylum seekers and their dependants).
- (3) Nothing in this section or the following provisions of this Part affects a person's entitlement to advice and information under section 179 (duty to provide advisory services).

184.

- (1) If the local housing authority have reason to believe that an applicant may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves-
  - (a) whether he is eligible for assistance, and

(b) if so, whether any duty, and if so what duty, is owed to him under the following provisions of this Part.

- (2) They may also make inquiries whether he has a local connection with the district of another local housing authority in England, Wales or Scotland.
- (3) On completing their inquiries the authority shall notify the applicant of their decision and, so far as any issue is decided against his interests, inform him of the reasons for their decision.
- (4) If the authority have notified or intend to notify another local housing authority under section 198 (referral of cases), they shall at the same time notify the applicant of that decision and inform him of the reasons for it.
- (5) A notice under subsection (3) or (4) shall also inform the applicant of his right to request a review of the decision and of the time within which such a request must be made (see section 202).
- (6) Notice required to be given to a person under this section shall be given in writing and, if not received by him, shall be treated as having been given to him if it is made available at the authority's office for a reasonable period for collection by him or on his behalf.

### *Eligibility for assistance*

#### 185.

- (1) A person is not eligible for assistance under this Part if he is a person from abroad who is ineligible for housing assistance.
- (2) A person who is subject to immigration control within the meaning of the Asylum and Immigration Act 1996 is not eligible for housing assistance unless he is of a class prescribed by regulations made by the Secretary of State.
- (3) The Secretary of State may make provision by regulations as to other descriptions of persons who are to be treated for the purposes of this Part as persons from abroad who are ineligible for housing assistance.
- (4) A person from abroad who is not eligible for housing assistance shall be disregarded in determining for the purposes of this Part whether another person-
  - (a) is homeless or threatened with homelessness, or
  - (b) has a priority need for accommodation.

#### 186.

- (1) An asylum-seeker, or a dependant of an asylum-seeker who is not by virtue of section 185 a person from abroad who is ineligible for housing assistance, is not eligible for assistance under this Part if he has any accommodation in the United Kingdom, however temporary, available for his occupation.
- (2) For the purposes of this section a person who makes a claim for asylum-
  - (a) becomes an asylum-seeker at the time when his claim is recorded by the Secretary of State as having been made, and
  - (b) ceases to be an asylum-seeker at the time when his claim is recorded by the Secretary of State as having been finally determined or abandoned.
- (3) For the purposes of this section a person-
  - (a) becomes a dependant of an asylum-seeker at the time when he is recorded by the Secretary of State as being a dependant of the asylum-seeker, and
  - (b) ceases to be a dependant of an asylum-seeker at the time when the person whose dependant he is ceases to be an asylum-seeker or, if it is earlier, at the time when he is recorded by the Secretary of State as ceasing to be a dependant of the asylum-seeker.
- (4) In relation to an asylum-seeker, "dependant" means a person-
  - (a) who is his spouse or a child of his under the age of eighteen, and
  - (b) who has neither a right of abode in the United Kingdom nor indefinite leave under the Immigration Act 1971 to enter or remain in the United Kingdom.
- (5) In this section a "claim for asylum" means a claim made by a person that it would be contrary to the United Kingdom's obligations under the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and the Protocol to that Convention for him to be removed from, or required to leave, the United Kingdom.

187.

- (1) The Secretary of State shall, at the request of a local housing authority, provide the authority with such information as they may require-
  - (a) as to whether a person is or has become an asylum-seeker, or a dependant of an asylum-seeker, and
  - (b) to enable them to determine whether such a person is eligible for assistance under this Part under section 185 (persons from abroad not eligible for housing assistance).
- (2) Where that information is given otherwise than in writing, the Secretary of State shall confirm it in writing if a written request is made to him by the authority.
- (3) If it appears to the Secretary of State that any application, decision or other change of circumstances has affected the status of a person about whom information was previously provided by him to a local housing authority under this section, he shall inform the authority in writing of that fact, the reason for it and the date on which the previous information became inaccurate.

*Interim duty to accommodate*

188.

- (1) If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they shall secure that accommodation is available for his occupation pending a decision as to the duty (if any) owed to him under the following provisions of this Part.
- (2) The duty under this section arises irrespective of any possibility of the referral of the applicant's case to another local housing authority (see sections 198 to 200).
- (3) The duty ceases when the authority's decision is notified to the applicant, even if the applicant requests a review of the decision (see section 202).

The authority may continue to secure that accommodation is available for the applicant's occupation pending a decision on a review.

189.

- (1) The following have a priority need for accommodation-
  - (a) a pregnant woman or a person with whom she resides or might reasonably be expected to reside;
  - (b) a person with whom dependent children reside or might reasonably be expected to reside;
  - (c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;
  - (d) a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster.
- (2) The Secretary of State may by order-
  - (a) specify further descriptions of persons as having a priority need for accommodation, and
  - (b) amend or repeal any part of subsection (1).
- (3) Before making such an order the Secretary of State shall consult such associations representing relevant authorities, and such other persons, as he considers appropriate.
- (4) No such order shall be made unless a draft of it has been approved by resolution of each House of Parliament.

*Duties to persons found to be homeless or threatened with homelessness*

190.

- (1) This section applies where the local housing authority are satisfied that an applicant is homeless and is eligible for assistance but are also satisfied that he became homeless intentionally.
- (2) If the authority are satisfied that the applicant has a priority need, they shall-
  - (a) secure that accommodation is available for his occupation for such period as they consider will give him a reasonable opportunity of securing accommodation for his occupation, and
  - (b) provide him with advice and such assistance as they consider appropriate in the circumstances in any



attempts he may make to secure that accommodation becomes available for his occupation.

- (3) If they are not satisfied that he has a priority need, they shall provide him with advice and such assistance as they consider appropriate in the circumstances in any attempts he may make to secure that accommodation becomes available for his occupation.

191.

- (1) A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.
- (2) For the purposes of subsection (1) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate.
- (3) A person shall be treated as becoming homeless intentionally if-
  - (a) he enters into an arrangement under which he is required to cease to occupy accommodation which it would have been reasonable for him to continue to occupy, and
  - (b) the purpose of the arrangement is to enable him to become entitled to assistance under this Part, and there is no other good reason why he is homeless.
- (4) A person who is given advice or assistance under section 197 (duty where other suitable alternative accommodation available), but fails to secure suitable accommodation in circumstances in which it was reasonably to be expected that he would do so, shall, if he makes a further application under this Part, be treated as having become homeless intentionally.

192.

- (1) This section applies where the local housing authority-
  - (a) are satisfied that an applicant is homeless and eligible for assistance, and
  - (b) are not satisfied that he became homeless intentionally, but are not satisfied that he has a priority need.
- (2) The authority shall provide the applicant with advice and such assistance as they consider appropriate in the circumstances in any attempts he may make to secure that accommodation becomes available for his occupation.

193.

- (1) This section applies where the local housing authority are satisfied that an applicant is homeless, eligible for assistance and has a priority need, and are not satisfied that he became homeless intentionally.

This section has effect subject to section 197 (duty where other suitable accommodation available).

- (2) Unless the authority refer the application to another local housing authority (see section 198), they shall secure that accommodation is available for occupation by the applicant.
- (3) The authority are subject to the duty under this section for a period of two years ("the minimum period"), subject to the following provisions of this section.

After the end of that period the authority may continue to secure that accommodation is available for occupation by the applicant, but are not obliged to do so (see section 194).

- (4) The minimum period begins with-
  - (a) if the applicant was occupying accommodation made available under section 188 (interim duty to accommodate), the day on which he was notified of the authority's decision that the duty under this section was owed to him;
  - (b) if the applicant was occupying accommodation made available to him under section 200(3) (interim duty where case considered for referral but not referred), the date on which he was notified under subsection (2) of that section of the decision that the conditions for referral were not met;
  - (c) in any other case, the day on which accommodation was first made available to him in pursuance of the duty under this section.
- (5) The local housing authority shall cease to be subject to the duty under this section if the applicant, having been informed by the authority of the possible consequence of refusal, refuses an offer of accommodation which the authority are satisfied is suitable for him and the authority notify him that they regard themselves as having discharged their duty under this section.

- (6) The local housing authority shall cease to be subject to the duty under this section if the applicant-
- (a) ceases to be eligible for assistance,
  - (b) becomes homeless intentionally from the accommodation made available for his occupation,
  - (c) accepts an offer of accommodation under Part VI (allocation of housing), or
  - (d) otherwise voluntarily ceases to occupy as his only or principal home the accommodation made available for his occupation.
- (7) The local housing authority shall also cease to be subject to the duty under this section if-
- (a) the applicant, having been informed of the possible consequence of refusal, refuses an offer of accommodation under Part VI, and
  - (b) the authority are satisfied that the accommodation was suitable for him and that it was reasonable for him to accept it and notify him accordingly within 21 days of the refusal.
- (8) For the purposes of subsection (7) an applicant may reasonably be expected to accept an offer of accommodation under Part VI even though he is under contractual or other obligations in respect of his existing accommodation, provided he is able to bring those obligations to an end before he is required to take up the offer.
- (9) A person who ceases to be owed the duty under this section may make a fresh application to the authority for accommodation or assistance in obtaining accommodation.



## National Housing Rights Legislation



### United Kingdom Housing Act (1985, as amended)

#### Section 9. Provision of Housing Accommodation

- (1) A local housing authority may provide housing accommodation -
  - (a) by erecting houses, or converting buildings into houses, on land acquired by them for the purposes of this Part, or
  - (b) by acquiring houses.
- (2) The authority may alter, enlarge, repair or improve a house so erected, converted or acquired.
- (3) These powers may equally be exercised in relation to land acquired for the purposes
  - (a) of disposing of houses provided, or to be provided, on the land, or
  - (b) of disposing of the land to a person who intends to provide housing accommodation on it.
- (4) A local housing authority may not under this Part provide a cottage with a garden of more than one acre.
- (5) Nothing in this Act shall be taken to require (or to have any time required) a local housing authority itself to acquire or hold any houses or other land for the purposes of this Part. (amendment under section 161 of the Local Government and Housing Act (1989)).

#### Section 22.

A local housing authority shall secure that in the selection of their tenants a reasonable preference is given to -

- (a) persons occupying insanitary or overcrowded houses;
- (b) persons have large families;
- (c) persons living under unsatisfactory housing conditions;
- (d) persons towards whom the authority are subject to a duty under section 65 to 68 (persons found to be homeless).

#### Section 58. (A) Homeless

- (1) A person is homeless if he has no accommodation in England, Wales or Scotland.
- (2) A person shall be treated as having no accommodation if there is no accommodation which he, together with any other person who normally resides with him as a member of his family or in circumstances in which it is reasonable for that person to reside with him—
  - (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court, or
  - (b) has an express or implied license to occupy, or in Scotland has a right or permission or an implied right or permission to occupy, or
  - (c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.
- (2A) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to occupy.
- (2B) Regard may be had, in determining whether it would be reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the district of the local housing authority to whom he has applied for accommodation or for assistance in obtaining accommodation.
- (3) A person is also homeless if he has accommodation but —
  - (a) he cannot secure entry to it, or
  - (b) it is probable that occupation of it will lead to violence from some other person residing in it or to threats of violence from some other person residing in it and likely to carry out the threats, or
  - (c) it consists of a movable structure, vehicle or vessel designed or adapted for human habitation and

there is no place where he is entitled or permitted both to place it and to reside in it.

(4) A person is threatened with homelessness if it is likely that he will become homeless within 28 days.

#### Section 59.

(1) The following have a priority need for accommodation —

- (a) a pregnant woman or a person with whom a pregnant woman resides or might reasonably be expected to reside;
- (b) a person with whom dependent children reside or might reasonably be expected to reside;
- (c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside;
- (d) a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster.

(2) The Secretary of State may by order made by statutory instrument —

- (a) specify further descriptions of person as having a priority need for accommodation, and
- (b) amend or repeal any part of subsection (1).

(3) Before making such an order the Secretary of State shall consult such associations representing relevant authorities, and such other persons, as he considers appropriate.

(4) No order shall be made unless a draft of it has been approved by resolution of each House of Parliament.

#### Section 60.

(1) A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.

(2) A person becomes threatened with homelessness intentionally if he deliberately does or fails to do anything the likely result of which is that he will be forced to leave accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.

(3) For the purposes of subsection (1) or (2) an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate.

(4) Regard may be had, in determining whether it would have been reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the district of the local housing authority to whom he applied for accommodation or for assistance in obtaining accommodation.

#### Section 61.

(1) References in this Part to a person having a local connection with the district of a local housing authority are to his having a connection with that district —

- (a) because he is, or in the past was, normally resident in that district, and that residence is or was of his own choice, or
- (b) because he is employed in that district, or
- (c) because of family associations, or
- (d) because of social circumstances.

(2) For the purposes of this section —

- (a) a person is not employed in a district if he is serving in the regular armed forces of the Crown;
- (b) residence in a district is not of a person's own choice if he becomes resident in it because he, or a person who might reasonably be expected to reside with him, is serving in the regular armed forces of the Crown.

(3) Residence in a district is not of a person's own choice for the purpose of this section if he, or a person who might reasonably be expected to reside with him, became resident in it because he was detained under the authority of an Act of Parliament.

(4) The Secretary of State may by order specify other circumstances in which —

- (a) a person is not to be treated for the purposes of this section as employed in a district, or
  - (b) residence in a district is not to be treated for those purposes as of a person's own choice.
- (5) An order shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Section 62.

- (1) If a person (an "applicant") applies to a local housing authority for accommodation, or for assistance in obtaining accommodation, and the authority have reason to believe that he may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves as to whether he is homeless or threatened with homelessness.
- (2) If they are so satisfied, they shall make any further inquiries necessary to satisfy themselves as to —
  - (a) whether he has a priority need, and
  - (b) whether he became homeless or threatened with homelessness intentionally;
 And if they think fit they may also make inquiries as to whether he has a local connection with the district of another local housing authority in England, Wales or Scotland.

#### Section 63.

Interim duty to accommodate in case of apparent priority need

- (1) If the local housing authority have reason to believe that an applicant may be homeless and have a priority need, they shall secure that accommodation is made available for his occupation pending a decision as a result of their inquiries under section 62.
- (2) The duty arises irrespective of any local connection which the applicant may have the district of another local authority.

#### Section 64.

- (1) On completing their inquiries under section 62, the local housing authority shall notify the applicant of their decision on the question whether he is homeless or threatened with homelessness.
- (2) If they notify him that their decision is that he is homeless or threatened with homelessness, they shall at the same time notify him of their decision on the question whether he has a priority need.
- (3) If they notify him that their decision is that he has a priority need, they shall at the same time notify him —
  - (a) of their decision whether he became homeless or threatened with homelessness intentionally, and
  - (b) whether they have notified or propose to notify another local housing authority under section 67 (referral of application on grounds of local connection).
- (4) If the local housing authority notify the applicant —
  - (a) that they are not satisfied that he is homeless or threatened with homelessness, or
  - (b) that they are not satisfied that he has a priority need, or
  - (c) that they are satisfied that he became homeless or threatened with homelessness intentionally, or
  - (d) that they have notified or propose to notify another local housing authority under section 67 (referral of application on grounds of local connection),
 They shall at the same time notify him of their reasons.
- (5) The notice required to be given to a person under this section shall be given in writing and shall, if not received by him, be treated as having been given to him only if it is made available at the authority's office for a reasonable period for collection by him or on his behalf.

#### Section 65. Duties to persons found to be homeless.

- (1) This section has effect as regards the duties owed by the local housing authority to an applicant where they are satisfied that he is homeless.
- (2) Where they are satisfied that he has a priority need and are not satisfied that he became homeless intentionally, they shall, unless they notify another local housing authority in accordance with section 67 (referral of application on grounds of local connection), secure that accommodation becomes available for his occupation.

- (3) Where they are satisfied that he has a priority need but are also satisfied that he became homeless intentionally, they shall -
  - (a) secure that accommodation is made available for his occupation for such period as they consider will give him a reasonable opportunity of securing accommodation for his occupation, and
  - (b) furnish him with advice and such assistance as they consider appropriate in the circumstances in any attempts he may make to secure that accommodation becomes available for his occupation.

#### Section 66. Duties to persons found to be threatened with homelessness

- (1) This section has effect as regards the duties owed by the local housing authority to an applicant where they are satisfied that he is threatened with homelessness.
- (2) Where they are satisfied that he has a priority need and are not satisfied that he become threatened with homelessness intentionally, they shall take reasonable steps to secure that accommodation does not cease to be available for his occupation.

#### Section 67.

- (1) If the local housing authority —
  - (a) are satisfied that an applicant is homeless and has a priority need, and are not satisfied that he became homeless intentionally, but
  - (b) are of opinion that the conditions are satisfied for referral of his application to another local housing authority in England, Wales and Scotland,  
They may notify that other authority of the fact that his application has been made and that they are of that opinion.
- (2) The conditions for referral of an application to another local authority are —
  - (a) that neither the applicant nor any person who might reasonably be expected to reside with him has a local connection with the district of the authority to whom the application was made,
  - (b) that the applicant or a person who might reasonably be expected to reside with him has a local connection with the district of that other authority, and
  - (c) that neither the applicant nor any person who might reasonably be expected to reside with him will run the risk of domestic violence in that other district.
- (3) For this purpose a person runs the risk of domestic violence —
  - (a) if he runs the risk of violence from a person with whom, but for the risk of violence, he might reasonably be expected to reside, or from a person with whom he formerly resided, or
  - (b) if he runs the risk of threats of violence from such a person which are likely to be carried out.
- (4) The question whether the conditions for referral of an application are satisfied shall be determined by agreement between the notifying authority and the notified authority or, in default of agreement, in accordance with such arrangements as the Secretary of State may direct by order made by statutory instrument.
- (5) An order may direct that the arrangements shall be —
  - (a) those agreed by any relevant authorities or associations of relevant authorities, or
  - (b) in default of such agreement, such arrangements as appear to the Secretary of State to be suitable, after consultation with such associations representing relevant authorities, and such other persons, as he thinks appropriate.
- (6) No order shall be made unless a draft of the order has been approved by resolution of each House of Parliament.

#### Section 68.

- (1) Where, in accordance with section 67(1), a local housing authority notifies another authority of an application, the notifying authority shall secure that accommodation is available for occupation by the applicant until it is determined whether the conditions for referral of his application to the other authority are satisfied.
- (2) If it is determined that the conditions for referral are satisfied, the notified authority shall secure that accommodation becomes available for occupation by the applicant; if it is determined that the conditions

are not satisfied, the notifying authority shall secure that accommodation becomes available for occupation by him.

- (3) When the matter has been determined, the notifying authority shall notify the applicant —
  - (a) whether they or the notified authority are the authority whose duty it is to secure that accommodation becomes available for his occupation, and
  - (b) of the reasons why the authority subject to that duty are subject to it.
- (4) The notice required to be given to a person under subsection (3) shall be given in writing and shall, if not received by him, be treated as having been given to him only if it is made available at the authority's office for a reasonable period for collection by him or on his behalf.

#### Section 69.

- (1) A local housing authority may perform any duty under section 65 or 68 (duties to persons found to be homeless) to secure that accommodation becomes available for the occupation of a person —
  - (a) by making available suitable accommodation held by them under Part II (provision of housing) or any enactment, or
  - (b) by securing that he obtains suitable accommodation from some other person, or
  - (c) by giving him such advice and assistance as will secure that he obtains suitable accommodation from some other person,

And in determining whether accommodation is suitable they shall have regard to Part IX (slum clearance), X (overcrowding) and XI (houses in multiple occupation) of this Act.



## National Housing Rights Legislation



### United Kingdom Housing Act (1988)

#### Section 5.

- (1) An assured tenancy cannot be brought to an end by the landlord except by obtaining an order of the court in accordance with the following provisions of this Chapter or Chapter II below or, in the case of a fixed term tenancy which contains power for the landlord to determine the tenancy in certain circumstances, by the exercise of that power and accordingly, the service by the landlord of a notice to quit shall be of no effect in relation to a periodic assured tenancy.
- (2) If an assured tenancy which is a fixed term tenancy comes to an end otherwise than virtue of -
  - (a) an order of the court, or
  - (b) a surrender or other action on the part of the tenant, then ... the tenant shall be entitled to remain in possession of the dwelling-house let under that tenancy and ... his right to possession shall depend upon a periodic tenancy arising by virtue of this section.

#### Section 27.

- (1) This section applies if, at any time after 9th June 1988, a landlord (in this section referred to as “the landlord in default”) or any person acting on behalf of the landlord in default unlawfully deprives the residential occupier of any premises of his occupation of the whole or part of the premises.
- (2) This section also applies if, at any time after 9th June 1988, a landlord (in this section referred to as “the landlord in default”) or any person acting on behalf of the landlord in default —
  - (a) attempts unlawfully to deprive the residential occupier of any premises of his occupation of the whole or part of the premises, or
  - (b) knowing or having reasonable cause to believe that the conduct is likely to cause the residential occupier of any premises —
    - (i) to give up his occupation of the premises or any part thereof, or
    - (ii) to refrain from exercising any right or pursuing any remedy in respect of the premises or any part thereof, does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, and, as a result, the residential occupier gives up his occupation of the premises as a residence.
- (3) Subject to the following provisions of this section, where this section applies, the landlord in default shall, by virtue of this section, be liable to pay to the former residential occupier, in respect of his loss of the right to occupy the premises in question as his residence, damages assessed on the basis set out in section 28 below.
- (4) Any liability arising by virtue of subsection (3) above —
  - (a) shall be in the nature of a liability in tort; and
  - (b) subject to subsection (5) below, shall be in addition to any liability arising apart from this section (whether in tort, contract or otherwise).
- (5) Nothing in this section affects the right of a residential occupier to enforce any liability which arises apart from this section in respect of his loss of the right to occupy premises as his residence; but damages shall not be awarded both in respect of such a liability and in respect of a liability arising by virtue of this section on account of the same loss.





## National Housing Rights Legislation



### United Kingdom

#### Housing Act of 2004 - Accommodation needs of gypsies and travelers (2004)

##### Sec. 225. Duties of local housing authorities: accommodation needs of gypsies and travellers

- (1) Every local housing authority must, when undertaking a review of housing needs in their district under section 8 of the Housing Act 1985 (c. 68), carry out an assessment of the accommodation needs of gypsies and travellers residing in or resorting to their district.
- (2) Subsection (3) applies where a local housing authority are required under section 87 of the Local Government Act 2003 (c. 26) to prepare a strategy in respect of the meeting of such accommodation needs.



## National Housing Rights Legislation



### United Kingdom Matrimonial Homes Act (1983)

#### Section 1.

- (1) Where one spouse is entitled to occupy a dwelling house by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him or her the right to remain in occupation, and the other spouse is not so entitled, then, subject to the provisions of this Act, the spouse not so entitled shall have the following rights (in this Act referred to as “rights of occupation”) -
  - (a) if in occupation, a right not to be evicted or excluded from the dwelling house or any part thereof by the other spouse except with the leave of the court given by an order under this section;
  - (b) if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling house.
- (2) So long as one spouse has rights of occupation, either of the spouses may apply to the Court for an order -
  - (a) declaring, enforcing, restricting or terminating those rights, or
  - (b) prohibiting, suspending or restricting the exercise by either spouse of the right to occupy the dwelling house, or
  - (c) requiring either spouse to permit the exercise by the other of that right.



## National Housing Rights Legislation



### United Kingdom

#### Protection From Eviction Act (1977, as amended by section 29 of the Housing Act 1988)

##### Section 1.

- (1) In this section “residential occupier”, in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.
- (2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believe, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.
- (3) If any person with intent to cause the residential occupier of any premises —
  - (a) to give up the occupation of the premises or any part thereof, or
  - (b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;
  - (c) does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence he shall be guilty of an offence.
- (3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—
  - (a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or
  - (b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence, and (in either case) he knows, or has reasonable cause to believe, that the conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole part of the premises.
- (3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.
- (3C) In subsection (3A) above, “landlord”, in relation to a residential occupier of any premises, means the person who, but for —
  - (a) the residential occupier’s right to remain in occupation of the premises, or
  - (b) a restriction on the person’s right to recover possession of the premises, would be entitled to occupation of the premises and any superior landlord under whom that person derives title.
- (4) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding six months or to both;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.



## National Housing Rights Legislation



### United Kingdom Race Relations Act (1976)

#### Section 21.

- (1) It is unlawful for a person, in relation to premises in Great Britain of which he has power to dispose, to discriminate against another:
  - (a) In the terms on which he offers him those premises; or
  - (b) By refusing his application for those premises; or
  - (c) In his treatment of him in relation to any list of persons in need of premises of that description.
- (2) It is unlawful for a person, in relation to premises managed by him, to discriminate against a person occupying the premises:
  - (a) In a way he affords him access to any benefits or facilities, or by refusing or deliberately admitting to afford him access to them; or
  - (b) By evicting him, or subjecting him to any other detriment.



## National Housing Rights Legislation



### United Kingdom Social Security Act (1986)

#### Section 20.

(7) A person is entitled to housing benefit if-

- (a) he is liable to make payments in respect of a dwelling in Great Britain which he occupies as his home and also if, in respect of a particular day falling after 31st March 1989, but before 1st April 1990, the condition specified in subsection (7A) below is satisfied;
- (b) there is an appropriate maximum housing benefit in his case; and
- (c) either -
  - (i) he has no income or his income does not exceed the applicable amount; or
  - (ii) his income exceeds that amount, but only by so much that there is an amount remaining if the deduction for which section 21(5) below provides is made ...

#### Section 21.

- (5) Where a person is entitled to housing benefit ..., the amount shall be what remains after the deduction from the appropriate maximum housing benefit of prescribed percentages of the excess of his income over the applicable amount.



## National Housing Rights Legislation



### **United Kingdom: Scotland** The Homelessness Act of 2003

[This law may well be one of the more progressive anti-homelessness laws in Europe. If effectively implemented, this legislation has the potential to guarantee protection of the right to adequate housing for all homeless persons in Scotland by 2012.]



## National Housing Rights Legislation



### United Republic of Tanzania

#### Land Act No. 4 (1999) and Village Land Act No. 5 (1999)

[The Land Act and the Village Land Act together provide the basic law in relation to the management and administration of land, settlement of disputes and related matters. Implementation of the Land laws will give rise to the need to inform all stakeholders about their rights and obligations, so that they can effectively participate in their implementation. The Village Land Act 1999 also creates opportunities of collective land ownership for pastoralists.]



## National Housing Rights Legislation



### United States of America Banks and Banking Act (1967) <sup>(20)</sup>

#### Section 1701t.

The Congress affirms the national goal, as set forth in section 1441 of Title 42, of “a decent home and a suitable living environment for every American family”.

The Congress finds that this goal has not been fully realized for many of the Nation’s lower income families; that this is a matter of grave national concern; and that there exist in the public and private sectors of the economy the resources and capabilities necessary to the full realization of this goal.

The Congress declares that in the administration of those housing programs authorized by this Act which are designed to assist families with incomes so low that they could not otherwise decently house themselves, and of other Government programs designed to assist in the provision of housing for such families, the highest priority and emphasis should be given to meeting the housing needs of those families for which the national goal has not become a reality; and in the carrying out of such programs there should be the fullest practicable utilization of the resources and capabilities of private enterprise and of individual self-help techniques. <sup>(21)</sup>





## National Housing Rights Legislation



### United States of America Civil Rights Code (1866)

#### Section 1982. Property rights of citizens <sup>(42)</sup>

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.



## National Housing Rights Legislation



### United States of America Civil Rights Code (1949, as amended) <sup>(24)</sup>

#### Section 1441. Congressional declaration of national housing policy

The Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family, thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth, and security of the Nation. The Congress further declares that such production is necessary to enable the housing industry to make its full contribution toward an economy of maximum employment, production, and purchasing power. The policy to be followed in attaining the national housing objective established shall be:

- (1) private enterprise shall be encouraged to serve as large a part of the total need as it can;
- (2) governmental assistance shall be utilized where feasible to enable private enterprise to serve more of the total need;
- (3) appropriate local public bodies shall be encouraged and assisted to undertake positive programs of encouraging and assisting the development of well-planned, integrated residential neighborhoods, the development and redevelopment of communities, and the production, at lower costs, of housing of sound standards of design, construction, livability, and size for adequate family life;
- (4) governmental assistance to eliminate substandard and other inadequate housing through the clearance of slums and blighted areas, to facilitate community development and redevelopment, and to provide adequate housing for urban and rural nonfarm families with incomes so low that they are not being decently housed in new or existing housing shall be extended to those localities which estimate their own needs and demonstrate that these needs are not being met through reliance solely upon private enterprise, and without such aid; and
- (5) governmental assistance for decent, safe, and sanitary farm dwellings and related facilities shall be extended where the farm owner demonstrates that he lacks sufficient resources to provide such housing on his own account and is unable to secure necessary credit for such housing from other sources on terms and conditions which he could reasonably be expected to fulfill.

The Department of Housing and Urban Development, and any other departments or agencies of the Federal Government having powers, functions, or duties with respect to housing, shall exercise their powers, functions, and duties under this or any other law, consistently with the national housing policy declared by this Act and in such manner as will facilitate sustained progress in attaining the national housing objective hereby established, and in such manner as will encourage and assist:

- (1) the production of housing of sound standards of design, construction, livability, and size for adequate family life;
- (2) the reduction of the costs of housing without sacrifice of such sound standards;
- (3) the use of new designs, materials, techniques, and methods in residential construction, the use of standardized dimensions and methods of assembly of home-building materials and equipment, and the increase of efficiency in residential construction and maintenance;
- (4) the development of well-planned, integrated, residential neighborhoods and the development and redevelopment of communities; and
- (5) the stabilization of the housing industry at a high annual volume of residential construction. <sup>(25)</sup>



## National Housing Rights Legislation



### United States of America

Civil Rights Code (1968, as amended) <sup>(26)</sup>

[Under the Fair Housing Act, it is illegal to discriminate against a person in the provision of housing because that person has HIV/AIDS, has a record of having HIV/AIDS, is perceived as having HIV/AIDS, is associated with persons with HIV/AIDS, or has a person with HIV/AIDS residing with them.]

#### Section 1441a. National housing goals

##### (a) Congressional findings and reaffirmation of goals

The Congress finds that the supply of the Nation's housing is not increasing rapidly enough to meet the national housing goal, established in the Housing Act of 1949 [42 U.S.C.A. s 1441 et seq.], of the "realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family". The Congress reaffirms this national housing goal and determines that it can be substantially achieved within the next decade by the construction or rehabilitation of twenty-six million housing units, six million of these for low and moderate income families.

##### (b) Additional Congressional findings

The Congress further finds that policies designed to contribute to the achievement of the national housing goal have not directed sufficient attention and resources to the preservation of existing housing and neighborhoods, that the deterioration and abandonment of housing for the Nation's lower income families has accelerated over the last decade, and that this acceleration has contributed to neighborhood disintegration and has partially negated the progress toward achieving the national housing goal which has been made primarily through new housing construction.

##### (c) Congressional declaration of purposes

The Congress declares that if the national housing goal is to be achieved, a greater effort must be made to encourage the preservation of existing housing and neighborhoods through such measures as housing preservation, moderate rehabilitation, and improvements in housing management and maintenance, in conjunction with the provision of adequate municipal services. Such an effort should concentrate, to a greater extent than it has in the past, on housing and neighborhoods where deterioration is evident but has not yet become acute. <sup>(27)</sup>

#### Section 3604. Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful —

- (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.
- (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.
- (c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.
- (d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
- (e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.
- (f)
  - (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of —

- (A) that buyer or renter,
  - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
  - (C) any person associated with that buyer or renter.
- (2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of —
- (A) that person; or
  - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
  - (C) any person associated with that person.
- (3) For purposes of this subsection, discrimination includes —
- (A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.
  - (B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or
  - (C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that —
    - (i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;
    - (ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
    - (iii) all premises within such dwellings contain the following features of adaptive design:
      - (I) an accessible route into and through the dwelling;
      - (II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
      - (III) reinforcements in bathroom walls to allow later installation of grab bars; and
      - (IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.
- (4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as “ANSI A117.1”) suffices to satisfy the requirements of paragraph (3)(C)(iii).
- (5)
- (A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.
  - (B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.
  - (C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).
  - (D) Nothing in this subchapter shall be construed to require the Secretary to review or approve the

plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

(6)

(A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 3610(f)(3) of this title to receive and process complaints or otherwise engage in enforcement activities under this subchapter.

(B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this subchapter.

(7) As used in this subsection, the term “covered multifamily dwellings” means —

(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(B) ground floor units in other buildings consisting of 4 or more units.

(8) Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this subchapter shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subchapter.

(9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. [49](#)



## National Housing Rights Legislation



### United States of America Civil Rights Code (1974, as amended) <sup>(28)</sup>

#### Section 5301. Congressional findings and declaration of purpose

##### (c) Decent housing, suitable living environment, and economic opportunities for persons of low and moderate income; community development activities which may be supported by Federal assistance

The primary objective of this chapter and of the community development program of each grantee under this chapter is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective, not less than 70 percent of the aggregate of the Federal assistance provided to States and units of general local government under section 5306 of this title and, if applicable, the funds received as a result of a guarantee or a grant under section 5308 of this title, shall be used for the support of activities that benefit persons of low and moderate income, and the Federal assistance provided in this chapter is for the support of community development activities which are directed toward the following specific objectives —

- (1) the elimination of slums and blight and the prevention of blighting influences and the deterioration of property and neighborhood and community facilities of importance to the welfare of the community, principally persons of low and moderate income;
- (2) the elimination of conditions which are detrimental to health, safety, and public welfare, through code enforcement, demolition, interim rehabilitation assistance, and related activities;
- (3) the conservation and expansion of the Nation's housing stock in order to provide a decent home and a suitable living environment for all persons, but principally those of low and moderate income;
- (4) the expansion and improvement of the quantity and quality of community services, principally for persons of low and moderate income, which are essential for sound community development and for the development of viable urban communities;
- (5) a more rational utilization of land and other natural resources and the better arrangement of residential, commercial, industrial, recreational, and other needed activity centers;
- (6) the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods;
- (7) the restoration and preservation of properties of special value for historic, architectural, or aesthetic reasons;
- (8) the alleviation of physical and economic distress through the stimulation of private investment and community revitalization in areas with population outmigration or a stagnating or declining tax base; and
- (9) the conservation of the Nation's scarce energy resources, improvement of energy efficiency, and the provision of alternative and renewable energy sources of supply.

It is the intent of Congress that the Federal assistance made available under this chapter not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance. <sup>(29)</sup>



## National Housing Rights Legislation



### United States of America

Civil Rights Code (1987, as amended, "The McKinney Act") <sup>(43)</sup>

Section 11301. Findings and purpose:

#### (a) Findings

The Congress finds that —

- (1) the Nation faces an immediate and unprecedented crisis due to the lack of shelter for a growing number of individuals and families, including elderly persons, handicapped persons, families with children, Native Americans, and veterans;
- (2) the problem of homelessness has become more severe and, in the absence of more effective efforts, is expected to become dramatically worse, endangering the lives and safety of the homeless;
- (3) the causes of homelessness are many and complex, and homeless individuals have diverse needs;
- (4) there is no single, simple solution to the problem of homelessness because of the different subpopulations of the homeless, the different causes of and reasons for homelessness, and the different needs of homeless individuals;
- (5) due to the record increase in homelessness, States, units of local government, and private voluntary organizations have been unable to meet the basic human needs of all the homeless and, in the absence of greater Federal assistance, will be unable to protect the lives and safety of all the homeless in need of assistance; and
- (6) the Federal Government has a clear responsibility and an existing capacity to fulfill a more effective and responsible role to meet the basic human needs and to engender respect for the human dignity of the homeless.

#### (b) Purpose

It is the purpose of this chapter —

- (1) to establish an Interagency Council on the Homeless;
- (2) to use public resources and programs in a more coordinated manner to meet the critically urgent needs of the homeless of the Nation; and
- (3) to provide funds for programs to assist the homeless, with special emphasis on elderly persons, handicapped persons, families with children, Native Americans, and veterans. <sup>(44)</sup>



## National Housing Rights Legislation



### United States of America

Civil Rights Code (as amended 1990, "Americans with Disabilities Act") <sup>(36)</sup>

#### Section 12101. Findings and purpose

##### (a) Findings

The Congress finds that —

- (1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;
- (2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;
- (3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;
- (4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;
- (5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;
- (6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;
- (7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;
- (8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and
- (9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

##### (b) Purpose

It is the purpose of this chapter —

- (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
- (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;
- (3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and
- (4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities. <sup>(37)</sup>





## National Housing Rights Legislation



**Uruguay**  
Constitution (1918)

### Article 45

Every inhabitant of the Republic has the right to decent housing. The law shall seek to ensure hygienic and economical housing by facilitating the purchase thereof and stimulating the investment of private capital to this end.



## National Housing Rights Legislation



### Uruguay

#### Act No. 14219 (1974)

[Sec. 3 of Act No. 14219 of 1974 creates an emergency housing register. Anyone entered on the register is automatically exempt from eviction pending an adjudication of the housing by the Mortgage Bank of Uruguay. This provision protects tenants, subtenants and poor occupants with contracts dating from before 1974, and is a guarantee of enormous benefit to low-income sectors of the population.] [↗](#)



## National Housing Rights Legislation



### Uruguay

Act No. 14384 (1978)

[Act No. 14384 of 1978 provides that all rural producers are entitled to a minimum investment in their land they occupy and, to working conditions which allow them to develop their holdings economically, whilst making a reasonable profit.] [\(52\)](#)



## National Housing Rights Legislation



### Venezuela Constitution (1999)

#### Artículo 23

Los tratados, pactos y convenciones relativos a derechos humanos, suscritos y ratificados por Venezuela, tienen jerarquía constitucional y prevalecen en el orden interno, en la medida en que contengan normas sobre su goce y ejercicio más favorables a las establecidas por esta Constitución y la ley de la República, y son de aplicación inmediata y directa por los tribunales y demás órganos del Poder Público.

[Establishing that international human rights treaties are incorporated into, and indeed trump, domestic law.]

#### Article 82

Everyone has a right to adequate housing, which is secure, comfortable, hygienic, with basic essential services that include an environment which humanizes family relations, neighborhoods and communities. The progressive realization of this right is an obligation which is divided between citizens and the State in all respects.

The State shall give priority to families and shall guarantee the existence of measures and access to social policies for credit and for the construction, acquisition or improvement of housing, especially to families with limited resources.



## National Housing Rights Legislation



**Viet Nam**  
Constitution (1992)

### Article 58

Citizens have the rights to own legally-earned income, savings, homes, means of activities and production, capital and other assets of business or other economic organizations. The state protects citizens' legal rights to ownership and inheritance.

### Article 62

Citizens have the right to build homes according to a plan and law. The rights of tenants and landlords shall be protected by law.



## National Housing Rights Legislation



**Viet Nam**

Decree on Housing (1991)

### Article 2.

The State recognizes and protects the right to housing ownership by individuals and institutions.

### Article 4.

The State encourages and facilitates the participation of all organizations and individuals in the maintenance and development of the housing space.



## National Housing Rights Legislation



### **Zambia** Constitution (1991)

#### Article 11 [Fundamental Rights and Freedoms]

It is recognized and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, color, creed, sex or marital status, but subject to the limitations contained in this Part, to each and all of the following, namely: ...

- (d) protection for the privacy of his home and other property and from deprivation of property without compensation;

and the provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

#### Article 17 [Privacy of Home and Other Property]

- (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.