

# **GUARANTEEING THE RIGHT TO ADEQUATE HOUSING AND SHELTER IN UGANDA:**

THE CASE OF WOMEN  
AND PEOPLE WITH DISABILITIES (PWDs)

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## LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
Cap.	Chapter (in Laws of Uganda)
CBOs	Community-Based Organisations
CC	Constitutional Court
CEDAW	Convention on Elimination of All Forms of Discrimination against Women
CERD	Convention on Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
Commn.	Communication
CRC	Convention on the Rights of the Child
FHRI	Foundation for Human Rights Initiative
FIDA(U)	Uganda Association of Women Lawyers
GDP	Gross Domestic Product
GOU	Government of Uganda
HURINET(U)	Human Rights Network-Uganda
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDPs	Internally Displaced Persons
ILO	International Labour Organisation
IMF	International Monetary Fund
ISIS-WICCE	Women's International Cross-Cultural Exchange
MDGs	Millennium Development Goals
NH&CC	National Housing and Construction Company
NGOs	Non-Governmental Organisations
NRM/A	National Resistance Movement/Army
NUWODU	National Union of Women with Disabilities in Uganda
PEAP	Poverty Eradication Action Plan
PWDs	Persons with Disabilities
SAPs	Structural Adjustment Policies
SC	Supreme Court
UBOS	Uganda Bureau of Statistics
UHRC	Uganda Human Rights Commission
UN	United Nations
UNCHR	United Nations Commission on Human Rights
UNDP	United Nations Development Programme
UNGA	United National General Assembly

## **SUMMARY OF PAPER AND MAIN RECOMMENDATIONS**

**Housing and shelter rights are often overlooked or marginalized within the context of discussions on the eradication of poverty, or in the process of development programming. Indeed, within the context of prevailing economic policy frameworks, the issue of housing and shelter is largely left to the private sector and individuals. Against, this background, this working paper examines the extent to which the right to adequate housing in Uganda has been realized, with particular attention paid to the situation of women and persons with disabilities. It examines the manner in which the national legal and policy framework accords recognition to the right and the extent to which these two specific groups in society are enabled to realize this category of economic, social and cultural rights. Within the context of human rights, gender and disability, the study explores the major constraints that inhibit realisation of the right to housing, through an examination of the scope and content of the right, the legal-policy framework and the practical experiences of women and of people with disabilities (PWDs) as regards housing/shelter situations and opportunities. The study not only addresses the obligations of the State and government *vis-à-vis* the promotion and realisation of the right to housing, but it also considers the role of non-state actors such as the private sector (financial institutions, estate agents and developers, etc.) and of civil society.**

**The study examines the legal and policy framework on the right to housing and makes the following key observations:**

- **The right to shelter and housing—as with other key socio-economic rights—is only recognised in an ephemeral manner in the 1995 national constitution.**
- **While there has been a national shelter strategy since 1992, a housing policy has remained at the level of ministerial statements.**
- **Matters of housing and shelter are only addressed inadequately or indirectly in policies on gender and disability and in the scattered pieces of legislation on land, town/urban planning, rent restriction, etc.**
- **Uganda’s key poverty alleviation policies and strategies do not address housing or shelter at all.**

■ The government strategy on shelter divests the State of responsibility for the provision of shelter. Indeed, the shelter strategy and the structural adjustment policies of the 1980s to date, underscore the approaches to shelter and housing in the post-1995 era, with the provision of housing left to the forces of the market and the private sector-driven economy.

■ The role of private sector actors is understandable with the context of a market-oriented economy and in respect of the provision of housing units, materials and financing.

The study addresses the realities of practical experiences with housing and finds that:

◆ In the key urban area in Kampala, the dominant shelter situation is informal settlements in slum areas on the outskirts of the city where the majority of its urban population dwells, and where there is a general lack of basic facilities and security of tenure.

◆ The creation of security of tenure under the 1998 land legislation has not resulted in the improvement of shelter, or afforded greater protection against eviction.

◆ Poor income levels and the decline in real income has made home purchase through the system of ‘individual affordability’—the basic premise of the 1992 shelter strategy—impracticable for the majority of urban dwellers who are low-income earners.

◆ Women and persons with disabilities are greatly disadvantaged and discriminated against in respect of access to land and income-generating activities. Thus legal security of tenure and affordability with regard to housing remains unrealisable.

◆ Ultimately, the other attributes of shelter, including habitability, accessibility, cultural adequacy and access to infrastructure, are not realisable in the informal settlements.

The study recommends several legislative, policy, administrative and other measures for the greater protection and realisation of the right to housing in Uganda. In contrast to the present situation of an indifferent State role as regards shelter and housing, the legislative and policy measures should underscore a more active

**and interventionist role in the government with regards to the provision of shelter and housing. The formulation of a new housing policy should be hastened. There is a need for benchmarks on housing, as well as for the activities of non-state actors and the participation of groups and communities in housing and settlement activities. There should also be clear financial commitment to shelter development in terms of budgetary allocations towards provision of low-cost housing and infrastructural development. In general, as a socio-economic right, there is a need for a 'human-rights based' approach to shelter and housing activities on the part of both the State and of the main non-state actors involved in the sector.**

## **I. CONCEPTUALISATION AND BACKGROUND**

### **1.1 Introduction**

The current world population stands at over 6 billion while that of Uganda stood, as of 2002, at 24.7 million. The common characteristic of both the global and the local is the continuing struggle to provide *adequate* housing or *decent* shelter to the populations in question. At both levels, the opportunities for adequate housing or decent shelter have remained unrealisable. The United Nations estimates that over 100 million people are homeless and over 1 billion worldwide are *inadequately* housed. The 2002 Population and Housing Census places over 77% of Uganda's population as living in sub-standard housing conditions, with the urban areas constituted of slum dwellings lacking in sanitation and drainage amenities and the rural areas constituted of leaky mud-and-wattle constructions.<sup>1</sup> And yet since the mid-1940s, the concerns with housing and shelter (and, on the larger stage, human *settlements* and *habitat*) have been at the heart of standard setting from a human rights perspective, especially within the context of economic, social and cultural rights. The language of economic, social and cultural rights has provided the impetus for social programs and policies as well as for legislative interventions to uplift the standards and the state of human existence in terms of not only housing and shelter but also of employment, education, health, food security as well as water and sanitation.

The right to housing or shelter is perhaps the most integrating and integrated of the socio-economic rights in the international corpus of human rights. It is related to the right to health, privacy, property, the family and children as well as to rights to education, water and sanitation. Often conceptualised under the rubric of the general 'right to a decent standard of living,' access to housing or shelter is the basic necessity towards the fulfilment of human life beyond simple survival. This is on account of the fact that housing or shelter fulfils physical needs by providing security and shelter from weather and climate; psychological needs by providing a sense of personal space and privacy as well as the social needs by providing a gathering area and communal space for the human family as the basic unit of society. As the family unit, it is the centre of family activities such as procreation and the raising of children. The human family is as varied as there are individuals and groups. As with the general developments in human rights, at the international and national levels, concerns with specific persons or groups

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<sup>1</sup> UBOS 2003.

have been the basis of standard setting, including in particular for minorities, women, children, and for people with disabilities, etc. Legislative and policy frameworks have addressed the status and rights of these varied groups, including housing and shelter rights.

## **1.2 Situating the Study**

### **1.2.1 Objectives and Study Questions**

This study seeks to address the extent to which the right to housing or shelter has been conceptualised in Uganda and its specific realisation for women and people with disabilities. It is undoubted that while emphasis has been placed in the past 20 or so years on empowering women and improving the position of people with disabilities, this has mainly been in terms of political participation. In terms of socio-economic rights, the focus has mainly been on the areas of education, employment and health. As a socio-economic right, adequate housing or shelter has been at the periphery of most legislative measures or social programs save indirectly in terms of land law reform or poverty-eradication programs. The realisation of the right to housing and shelter in Uganda invariably calls for an understanding of the scope and parameters of the right in relation to the situation of women and people with disabilities. In fact, although there exist housing and settlement policies/strategies and scattered laws addressing concerns on land and security of tenure, town/urban planning, rent restriction, among others, the main question is whether all these adequately address and enjoin the realisation and enjoyment of the right by women and people with disabilities?

As a party to various international human rights instruments, do Uganda's existing legislative and policy measures adequately ensure access to adequate housing and shelter for women and people with disabilities? First of all, are the existing national laws adequate in addressing housing and shelter rights and to foster the realization of these rights? Secondly, there are evident problems in ensuring access (and *equality* in access), adequacy (or habitability) as well as protection from *eviction* (by state and non-state actors) as the key attributes of housing and shelter rights. Thirdly, have the prevailing macro-economic policies, evidenced in for instance poverty alleviation policies (PEAP, *entandikwa*) and other interventions (e.g. budgeting), as well as other general and sectoral policies addressed and fostered the realisation of the right to housing or shelter generally and specifically with respect to women and people with disabilities. Finally, what role has non-state actors, including civil society and private entities, played as regards the promotion and realisation of housing rights?

### **1.2.2 Statement of the problem**

The realisation of the right to shelter and housing in Uganda calls for a comprehensive understanding of the scope and parameters of the right. Thus while there exists a policy on housing and scattered laws addressing concerns on land and security of tenure, town/urban planning, etc., these do not adequately address and enjoin the effective exercise and enjoyment of the right. Furthermore, as a party to various human rights instruments, Uganda's existing legislative and policy measures do not adequately ensure access to adequate or decent shelter.

Additionally, there are a number of pertinent concerns as regards the content and parameters of the right. In the first instance, there are evident problems in ensuring access (and *equality* in access), adequacy (or habitability) as well as protection from *eviction* (by state and non-state actors) as key attributes of housing rights. Secondly, the existing legislative and policy measures fall far short of dealing with issues of *land* rights and legal *security of tenure* within the context of housing as well as aspects of *gender* and *disability* and the provision for *affordable* housing for the *poor*. Thus, issues on security of tenure have remained in spite of new land legislation. Thirdly, the prevailing macro-economic policies have not been very helpful in that regard, evidenced by the fact that poverty alleviation policies such as the PEAP, are not rights-based, given that they generally do not address socio-economic rights, including housing rights. The problem with the right to housing is not so much its recognition, even if in only an ephemeral manner in the national constitution, but in the lack of fostering its promotion and fulfilment.

### **1.2.3 Methodology and Scope of the study**

The study entailed both desk and field research. The desk research involved an examination of primary and secondary sources in form of the key international human rights instruments, national legislation and policies, judicial decisions, treaties as well as scholarly work in texts and the journals and documented findings of civil society actors. The field research was carried out primarily in Kampala District with randomly selected participants in the major informal settlements of Kawempe, Karelwe, Kivulu and Naguru Go-down and in the more planned areas such as Bugolobi, Naguru and Naalya Estate in the eastern and northern-eastern parts of the city. The field research was also undertaken in one conflict area, in particular the Pabbo internally displaced persons (IDPs) camps in Gulu. The participants included primarily women and persons with disabilities (PWDs) randomly selected in the informal settlements. Additionally, the participants included officials at key

ministries (Ministry of Housing & Urban Development), commercial banks, house financing and micro-financing institutions, NGOs (ISIS-WICCE, FIDA (U), NUWODU) as well as officials at land and estate agents and service agencies. The field methodology consisted mainly of unstructured interviews with the key respondents, while observation was used in evaluating the state of shelter situations in the selected locations. Focus group discussions (FGDs) were used to explore certain situations as regards shelter opportunities in respect of women in certain locations. The purpose of the methodology was to draw out the experiences of individuals or groups or actors with regard to housing rights, and it bore in mind the literacy levels of the respondents.

The study is primarily focused on the realisation of the right to housing in Uganda. While the status of shelter and housing before 1986 is considered, the study treats in a historical perspective the situation of the right primarily since 1986, especially in the legislative and policy measures of the NRM/A government (1986-1995) and the Movement government (1995-present). More crucially, the study considers the promotion and realisation of housing rights with respect to women and persons with disabilities. The realization of the right to housing in Uganda is examined against the existing legislative and other measures (e.g. policy, administrative actions, budgeting and related interventions in the housing sector) and the manner and extent that the law, policy and interventions have given effect to the minimum standards as regards the right. Against the background data on the state of housing and shelter in Uganda, the field research carried out with respect to housing situations drew out the actual experiences with regards to housing amongst women and persons with disabilities.

#### ***1.2.4 Conceptual and definitional issues***

The socio-economic right addressed in the study is often conceptually conceived in terms of '*adequate housing*' or '*decent shelter*.' The phrases '*adequate housing*' and '*decent shelter*' are used interchangeably in the study given that different legal (and policy) instruments adopt either of them, yet they invariably refer to the same conceptual idea. For the purposes of clarity, while a house (as a noun) refers to the four walls and a roof, housing (as a verb) is its totality as a system in terms of the fulfilment of human needs, providing security and shelter. Furthermore, while shelter may be the same as a house, it does not necessarily imply housing. Housing and shelter are however related to 'human settlements' that include not only the house but also the support social infrastructure and services, including roads, water, sanitation, schools, hospitals, jobs, etc. The continued existence or thriving of these services in a sustainable manner has conjured up phrases such as '*sustainable shelter*.' Invariably, '*housing*', '*shelter*', '*human settlements*',

or 'human habitat' denotes the totality of an individual's habitat and all that human activities and survival that go with it.

Crucially the conceptual or definitional issue is what is 'adequacy' or 'decency' in respect of housing or shelter? The adequacy of housing or the decency of shelter is a fluid concept. With the traditional conceptions premised on the physical standards (of four walls and a roof), this misses other attributes or factors of housing or shelter, that is, security of tenure, social infrastructure support, etc. A definition of 'adequacy' in relation to housing has been proffered as entailing 'adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost'.<sup>2</sup> Thus, Rev. Fr. John Mary Waliggo has remarked:

*The right to adequate housing in this respect does not merely mean having a roof over one's head or having shelter as a commodity or that everyone must inhabit a luxurious mansion and live on Naguru Hill, but the definition represents a minimum standard of what the legal content of the right to housing should include.*<sup>3</sup>

Ultimately, what is adequate or decent is relative.<sup>4</sup> The adequacy or decency of housing or shelter will be determined by several factors including the security of tenure, affordability, habitability, accessibility, location, availability of services, materials and infrastructure and cultural adequacy. These are invariably some of the minimum core obligations with regards to housing.

Additionally, in contextualising the study to women and persons with disabilities, cognisance is made of the fact that the status and gender roles of women as well as disability varies amongst the individuals in question and even within the context of the society or the communities to which they belong. In other words, women and persons with disabilities are obviously not homogenous communities. Thus, while there exists a general conception

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<sup>2</sup> UN Global Shelter Strategy for the Year 2000, UN Doc. A/43/8/Add. 1. See also UNGA Resn 42/91, Mar. 9, 1998, Annex. The CESCR has observed that a definition of 'adequacy' with regard to housing is influenced by social, economic, cultural, climatic, ecological, and other factors: General Comment No. 4 (1991), para 4.

<sup>3</sup> Waliggo 2001, at 3.

<sup>4</sup> See Walsh, B., 'Healthy Building News: The Unbearable Lightness Of Being Green; Earth Day & Green Building', at [http://www.healthybuilding.net/newsunbearable\\_lightness.041904.html](http://www.healthybuilding.net/newsunbearable_lightness.041904.html).

in the law and policy as to the ‘marginalised’ and ‘disadvantaged’ position of women and persons with disabilities, their position, roles and opportunities as regards housing or shelter is nonetheless to be considered against varied economic and socio-cultural factors.

### **1.3 Conception of the Right to Housing in International Law**

#### ***1.3.1 Postulation of the right***

The right to housing in international law was conceived against the backdrop of the overall conceptualisation of economic, social and cultural rights as part of the international bill of rights in 1966. However, in 1948, it was constituted as part of the batch of rights conceptualised, as already noted above, under the rubric of the general ‘right to a decent standard of living.’<sup>5</sup> Such conceptualisation of a right to housing under the rubric of the general right to an ‘adequate standard of living’ informs its subsequent recognition and affirmation as a socio-economic right in major international human rights instruments. This is the case under the 1966 International Covenant on Economic, Social and Cultural Rights.<sup>6</sup> In terms of the regional instruments, the right is also construed as implicit in the provisions of the 1981 African Charter on Human and Peoples’ Rights protecting the right to enjoy the best attainable state of health, the right to property and the protection accorded to the family.<sup>7</sup> Thematic conventions, for instance, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), has similarly construed the right in terms of ‘adequate living conditions.’<sup>8</sup> Other human rights instruments address and affirm housing as a right, including conventions and declarations on racial

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<sup>5</sup> Universal Declaration of Human Rights 1948, art. 25(1).

<sup>6</sup> Art. 11(1). See CESCR, General Comment No. 14: *The right to the highest attainable standard of health*, E/C.12/2000/4, paras 3-4. See also Leckie 1995, at 107. See further *Report of the Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living*, E/CN.4/2005/48, Mar. 3, 2005;

<sup>7</sup> Arts 14, 16 and 18(1). See also *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, ACHPR Commn. No. 55/96 (hereinafter *SERAC case*). The African Commission on Human and Peoples’ Rights observed:

Although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, ... the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health, and family life are adversely affected. It is thus noted that the combined effect of Articles 14, 16 and 18(1) reads into the Charter a right to shelter or housing ... (at para. 60).

<sup>8</sup> Art 14(2)(h).

discrimination,<sup>9</sup> labour,<sup>10</sup> refugees,<sup>11</sup> children,<sup>12</sup> people with disabilities,<sup>13</sup> indigenous peoples,<sup>14</sup> and development,<sup>15</sup> to mention only a few.

Furthermore, existing international legal instruments have addressed the right to housing within the context of gender and disability. As regards women, the ICESCR calls for States to 'ensure the equal right of *men* and *women* to the enjoyment of all economic, social and cultural rights set forth in the ... Covenant.'<sup>16</sup> Invariably, this extends to the right to an adequate standard of living (including housing). Additionally, as we noted above, CEDAW guarantees the right to *adequate living conditions*, particularly housing. On the other hand, there is an *express* provision on the right of *equal access* to housing under the 2005 Protocol to the African Charter on the Rights of Women.<sup>17</sup> As regards people with disabilities, apart from the 1975 Declaration on the Rights of Disabled Persons, there has been recognition of this category of individuals under the socio-economic rights regime, of the 'effects of disability-based discrimination on housing' and of the necessity to ensure that people with disabilities have 'access to ... *accessible* housing'.<sup>18</sup>

It is to be noted that the issue of housing would attain international prominence from the late 1970s with the United Nations taking a keen interest in the issue of human settlements. Thus, from the 1976 Vancouver Conference on Human Settlements (Habitat I),<sup>19</sup> the 1996 Istanbul Conference on Human Settlements (Habitat II),<sup>20</sup> the 1998 United Nations Global Strategy for Shelter to the Year 2000<sup>21</sup> to the 2001 Declaration on Cities and other Human Settlements in the New Millennium, adequate shelter

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<sup>9</sup> Convention on the Elimination of all Forms of Racial Discrimination (1965), art 5(e)(iii).

<sup>10</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), art 43(1)(d). See also ILO Convention on Migration of Employment (No. 97) (1949), art 6(iii); ILO Recommendation concerning Workers' Housing (No. 115) (1961), sec II(2), III(8)(2)(b) and VI(19); ILO Recommendation concerning Older Workers (No. 162) (1980), sec II 5(g).

<sup>11</sup> Convention relating to the Status of Refugees (1951), art 21.

<sup>12</sup> Convention on the Rights of the Child (1989), arts 16(1) and 27(3); African Charter on the Rights and Welfare of the Child (1990), art 20(2)(a).

<sup>13</sup> Declaration on the Rights of Disabled Persons (1975), art 9.

<sup>14</sup> Draft Declaration on the Right of Indigenous Peoples (1994), art 22.

<sup>15</sup> Declaration on the Right to Development (1986), art 8(1).

<sup>16</sup> Art 3.

<sup>17</sup> Art. 16.

<sup>18</sup> CESCR, Comment No. 5(1994), paras 15 and 22.

<sup>19</sup> Vancouver Declaration on Human Settlements (1976), sec III.8 and Chapter II.A.3.

<sup>20</sup> Istanbul Declaration on Human Settlements (1996), paras 3 and 8.

<sup>21</sup> UNGA Res. 43/181, para 13.

and services have been affirmed as a basic human right. The Istanbul Declaration is of particular interest in the fact that it refers to *equal* (and non-discrimination in) access to housing and the promotion of shelter for, among others, *women* and *people with disabilities* as well as integration of *gender* perspectives in human settlements related legislation, policies, programs and projects.<sup>22</sup> On the other hand, a year before Istanbul, the 1995 Beijing Declaration and Platform of Action had dealt with the problem of inadequate housing with regards to women and the need for governments to ensure ‘access to housing’.<sup>23</sup> With an emphasis being placed on the issue of housing, the position of the UN Special Rapporteur on Adequate Housing was established in 2000.<sup>24</sup>

### ***1.3.2 Broad attributes and obligations regarding the right***

The right to housing as conceptualised in the international human rights legal regime poses a number of questions, especially in terms of obligations placed on States and governments. First of all, what is the scope of the obligations as regards the realisation of the right to housing or shelter? Secondly, what are the minimum *core* obligations as regards housing or shelter? Given that Uganda is a party to the major human rights instruments guaranteeing housing and shelter rights,<sup>25</sup> it is pertinent at this point to address these questions in order to determine how far the country has gone in ensuring the realisation of the right to housing and shelter *vis-à-vis* women and people with disabilities.

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<sup>22</sup> Comment No. 5., *op.cit.*, at paras 40 (b)(d) (j) (i) and 46(a).

<sup>23</sup> Arts 49, 60(n) and 94.

<sup>24</sup> UNCHR Resn 2000/9 (2000). Appointed in 2000 for a term of three years, the first and current Rapporteur is Miloon Kothari. The Rapporteur’s mandate includes reporting on the status of realization of housing rights, promoting cooperation among and assistance to governments, UN agencies and international and national NGOs, applying a gender perspective, identifying possible types and sources of funding for housing activities, and facilitating the inclusion of housing issues in relevant UN missions and national offices.

<sup>25</sup> Uganda has ratified the key human rights instruments: ICESCR (21 January, 1987), ACHPR (1986), CERD (21 November, 1980), CEDAW (23 July, 1985), CRC (17 August 1990), ACRWC (1994), PRWA (2003).

As parties to international human rights instruments, attendant obligations are placed upon States and governments towards the realisation of housing in terms of the general obligations regarding socio-economic rights. These obligations inure in terms of *duties to respect, protect, promote and fulfil*.<sup>26</sup> In the *SERAC case*, in which several socio-economic rights under the ACHPR were in issue, the African Commission on Human and Peoples Rights was conscious of this, stating that:

*Internationally accepted ideas of the various obligations engendered by human rights indicate that all rights – both civil and political rights and social and economic – generate at least four levels of duties for a State that undertakes to adhere to a rights regime, namely the duty to **respect, protect, promote, and fulfil these rights**. These obligations universally apply to all rights and entail a combination of negative and positive duties. As a human rights instrument, the African Charter is not alien to these concepts and the order in which they are dealt with here is chosen as a matter of convenience and in no way should it imply the priority accorded to them. Each layer of obligation is equally relevant to the rights in question.*<sup>27</sup>

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<sup>26</sup> See Eide 1995, op. cit. 4, at 21-40.

<sup>27</sup> *SERAC case*, op. cit., at para. 41 (original bolding). The Commission considers these duties as imposed at the *primary* level (respect), *secondary* level (protect), *tertiary* level (promote) and a *fourth* level (fulfil): Id., paras 42-44.

With regards to housing, the duty to *respect* implies for the State a *positive* duty to avoid carrying out, advocating or condoning the practice of forced or arbitrary evictions from homes. The duty to *protect* places an obligation to create and foster a framework, through legislation, policy and other remedies, that enables the individuals to freely realize housing and shelter needs.<sup>28</sup> The duty to *promote* entails recognition by the State of the multi-faceted human rights dimensions of housing and to take steps that promote, rather than erode, the legal and practical realisation of housing rights (including, for instance, promoting tolerance, raising awareness, and even building infrastructures). The duty to *fulfil* entails more of a positive expectation on the part of the State to move its machinery towards the actual realisation of the housing rights (including issues of public expenditure, regulation of economy, land markets, rent levels, and provision of public housing and basic services, etc.). Invariably, the obligations regarding housing rights, as one of the socio-economic rights, are to be undertaken to the maximum of the *available resources* and their full realisation to be achieved *progressively*.

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<sup>28</sup> Reflecting on the duties to *respect* and to *protect* in the *SERAC case*, the African Commission addressed conduct of the Nigerian authorities and of the oil companies in the destruction of Ogoni houses and villages in the Delta region and stated:

At a very minimum, the right to shelter obliges the Nigerian government not to destroy the housing of its citizens and not to obstruct efforts by individuals or communities to rebuild lost homes. The State's obligation to *respect* housing rights requires it, and thereby all of its organs and agents, to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of the individual or infringing upon his or her freedom to use those material or other resources available to them in a way they find most appropriate to satisfy individual, family, household or community housing needs. Its obligations to *protect* obliges it to prevent the violation of any individual's right to housing by any other individual or non-state actors like landlords, property developers, and land owners, and where such infringements occur, it should act to preclude further deprivations as well as guaranteeing access to legal remedies. The right to shelter even goes further than a roof over ones head. It extends to embody the individual's right to be let alone and to live in peace- whether under a roof or not. : Id., para 62 (my italics).

As regards incidences of forced evictions, the Commission observed: "The particular violation by the Nigerian Government of the right to adequate housing as implicitly protected in the Charter also encompasses the right to *protection* against forced evictions": Id., para 64. Furthermore, of particular interest as regards the duty to *protect* is the enforceability (and realisation of remedies for violations) of housing rights as a socio-economic right. The *SERAC case* attests to the enforceability (and justiciability) of socio-economic rights under the Charter. In fact, the Commission stated:

Clearly, collective rights, environmental rights, and economic and social rights are essential elements of human rights in Africa. The African Commission will *apply* any of the diverse rights contained in the African Charter. It welcomes this opportunity to make clear that there is no right in the African Charter that cannot be made *effective* Id., para 68.

#### **1.4 Uganda's 1995 Constitution and Housing as a 'Right'**

As noted above, Uganda is party to key international human rights instruments guaranteeing the right to housing. Although not pointed out above as part of the key obligations of States with regard to socio-economic rights, there is nonetheless a primary obligation (in fact, at the outset) for states to *recognize* a right. In respect of housing, this entails recognition of the human rights dimensions of housing and that legislative measures, together with appropriate policies, geared towards progressive realization of housing rights, form part of the obligation to recognize. In Uganda, the *recognition* of socio-economic rights under the national legal order, that is, under the 1995 Constitution, is scanty, since it is limited to private property, a clean environment, education and rights at work,<sup>29</sup> although there is a saving provision on the recognition of other human rights and freedoms *not* specifically mentioned in chapter IV.<sup>30</sup> In terms of conceiving a right to adequate housing, this is perhaps implicit in the general social and economic objectives that inform the constitution, whereby the State is expected to ensure that 'all Ugandans enjoy rights and opportunities and access to ... decent shelter'.<sup>31</sup>

There are four possible arguments for the case for a right to housing in Uganda. First, is to consider the right as a part of the other human rights and freedoms *not* specifically mentioned in chapter IV. Secondly, it may be necessary to treat the national objectives as informing interpretation of the constitution including the bill of rights. Thirdly, is to adopt a holistic approach to socio-economic rights that draws on the relationship and interdependence between those rights and the traditional first generation civil and political rights. The enjoyment of a right to housing in Uganda would thus draw upon other expressly stipulated rights such as the right to life, privacy, property and the right to a family.<sup>32</sup>

In fact, in a number of other Commonwealth jurisdictions, the right to life has been construed widely as to encompass the *sustenance* of life as well as the *quality* of life, i.e. the right as embracing the capacity both to 'sustain life' and 'to enjoy it in a full measure',<sup>33</sup> and as therefore extending to the protection and realisation of the right to a clean and healthy environment,

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<sup>29</sup> Constitution of the Republic of Uganda, 1995, arts 28, 30, 39 and 40. The marginal note to article 40 claiming that it addresses 'economic rights' is in fact misleading.

<sup>30</sup> Id., art. 45.

<sup>31</sup> Id., National Objectives and Directive Principles of State Policy, objective XIV(ii).

<sup>32</sup> 1995 Constitution, arts 22, 27, 28 and 31.

<sup>33</sup> *Ramkrishnan & Ors v State of Kerala & Ors*, O.P. No. 24160/1998-A, Judgement of Feb. 12, 1999, para 25 (India HC)(unreported).

education as well as shelter and livelihoods.<sup>34</sup> Furthermore, as has been evinced in judicial practice, socio-economic rights (including housing rights) can be given effect to or realised under the constitutional principle that fundamental rights are to be interpreted in such a manner as to make them 'meaningful' and 'effective.' To that end, a right to life would not be meaningful if its 'quality' was undermined. For the right to be meaningful and effective, it is to be construed as wide and far-reaching to bring within its scope the right to housing or shelter.<sup>35</sup> Fourthly, is to use international human rights obligations and standards in the interpretation and enforcement of socio-economic rights by the national bodies (in particular the judicial bodies).<sup>36</sup> These approaches would not only lend a human rights dimension to the socio-economic rights, often not included or inadequately elaborated in the bill of rights (as is the case in Uganda), but also enable them to be justiciable.

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<sup>34</sup> On the relationship between 'shelter' and the right to life: e.g. *Tellis & Others v. Bombay Municipal Corporation & Others* [1987] LRC (Const) 351 (India SC) (demolition of shanty dwelling places of slum-dwellers in Bombay); *Bangladesh Society for the Enforcement of Human Rights (BSEHR) & Others v. Government of Bangladesh & Others* (2000) 3 CHRLD 217 (Bangladesh SC) (eviction of women sex-workers and their children from residences constituting brothels). See also *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan* (1991) 11 SCC 133 (India SC).

<sup>35</sup> This principle was applied in *Salvatori Abuki & Another v. Attorney General*, Constitutional Case No. 1/1997 (CC) (unreported), judgment of Egonda-Ntende, JA, at 7 (determining that an order of exclusion (or banishment) under the Witchcraft Act deprived the petitioners of access to ancestral lands (for food and shelter)). To that end, for the right to life under article 22 of the 1995 Constitution to be *effective* and *meaningful*, it entailed access to food and shelter. See also *Attorney General v. Salvatori Abuki & Another*, Constitutional Appeal No. 1/1998 (SC) [2000] 1 LRC 63.

<sup>36</sup> See *Kalyango Mutesasira & Another v. Kunsu Kiwanuka & Others*, Complaint UHRC No. 501/2001. In enforcing pension as a socio-economic right, the Uganda Human Rights Commission treated the duty placed upon the State to make provision for welfare of the aged under the National Objectives and Directive Principles in the Constitution as underpinning the making of provision for social security: *Id.*, at 6. Further, the Commission took cognisance of the international human rights legal regime and observed that Uganda, as signatory to the ICESCR, was under an obligation to ensure the realisation of social security as a 'right': *Id.*, at 4 to 5.

## **II. THE STATE OF HOUSING/SHELTER IN UGANDA SINCE 1986: A BROAD OVERVIEW**

Between 1948 and 2002, the population of Uganda multiplied five-fold from 5 million to almost 25 million. This has however not been matched by a corresponding increase in the stock of housing, such that, as of 2002, with the rate of population growth standing at 3.4% per annum, there is an annual national requirement of 426,000 housing units (with a housing deficit then estimated at 560,000 units).<sup>37</sup> The annual housing needs for Kampala alone stand at about 9,500 units for new households (and already there is a backlog estimated at over 52,000 units).<sup>38</sup> Over the decades, successive governments have adopted various approaches, including legislative and policy measures, towards the achievement of sufficient housing and shelter in the country.

### **2.1 Pre-1986 approaches to Housing/Shelter in Uganda**

Prior to independence, the provision of social services including health services, education, water and infrastructure such as roads, railways, water transport, and basic housing was primarily the function of the colonial government. Notably, there was a disparity based on racial grounds in the distribution and access to these services. The reality is that housing and, at a larger stage, urban development, during the colonial period was 'geared towards the socio-economic convenience of the colonial government.'<sup>39</sup> The approach to shelter and urbanisation entailed the European administrators settling on 'public land with fully developed urban amenities' where 'they had relatively high degree of autonomy to run their affairs and choice of appropriate shelter,' while Africans, were regarded as temporary residents satisfying a labour demand in urban centres, lived in rural areas or on the fringes of towns where 'conditions of living from *shelter* to water were deplorable.'<sup>40</sup> With controls exercised over rural-urban migration, it would only be later in the colonial period that provision would be made for 'free "boys" quarters and rented accommodation' in the urban centres for the Africans.<sup>41</sup>

While post-independence governments continued to undertake the provision of housing, the various approaches adopted resulted in a chaotic housing situation. The new governments did not rely on rural-urban migration controls symptomatic of the colonial period through by-laws. Instead, they

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<sup>37</sup> See GOU, Ministry of Works, Housing and Communication, 'Brief on the National Housing Policy', undated, 3.

<sup>38</sup> National Housing and Construction Corporation, 'Kampala Residential Market Survey', Feb. 2000, sec 6.3.

<sup>39</sup> Opolot 2003, 6, 10.

<sup>40</sup> Id.

<sup>41</sup> Id.

shoved the poor to the underdeveloped portions of Kampala and other townships, thereby keeping them away from the affluent.<sup>42</sup> This resulted in the creation of informal settlements in Kisenyi, Kivulu and Katanga, that exist to-date. Secondly, the nature of the land tenure was primarily of a dual character, that is, public land and mailoland, with the latter held in the hands of a few landlords who had (and to-date have) no interest in developing the land and were happy to let shanty structures mushroom on the land and collect rent on it.

Public land accommodated the public offices and residences of government and public servants, while the part that was leased out was well planned with attendant urban social amenities. This epitomised areas in Kampala such as Kololo, Bugolobi, Naguru (a part of which was allotted to the East African Community), Nakasero, and, in other urban centres, what came to be popularly referred to as 'senior staff quarters.' Thirdly, while the 1962 and 1967 constitutions guaranteed the economic right to private property,<sup>43</sup> they paid no attention to socio-economic rights (including housing). In any event, apart from labour rights where Uganda had ratified a number of ILO conventions during the period 1962-1970,<sup>44</sup> Uganda did not become party to the key international human rights instruments until the mid-1980s. In effect, there was no impetus to secure socio-economic rights, save for certain labour rights, in national laws and policies as a matter of international obligation.

It is a fact though that while the land tenure system and the constitutional legal framework accorded emphasis to private property, social policy initiatives on the part of the government resulted in marked provision for housing. This included policies such as the 'move to the left', epitomised in the Common Man's Charter during the Obote I regime, reaffirming the role of the government in the provision of social services (including housing and shelter). To that end, several housing estates and units were constructed by a parastatal, the National Housing and Construction Corporation (NH & CC), including the Bukoto 'white' and 'brown' flats and the flats at Wandegeya (popularly known as the 'Makerere' flats). On the other hand, international assistance and aid resulted in the construction of the Bugolobi flats. The primary function of these housing endeavours was to accommodate citizens

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<sup>42</sup> Id.

<sup>43</sup> See *Shah v. Uganda* [1967] EA 261; *E.F. Ssempebwa v. Attorney-General*, Constitutional Case No. 1/1986.

<sup>44</sup> The ratified ILO instruments were the Minimum Age (Industry) Convention of 1919 (No. 5) in 1963 and the Minimum Age (Underground Work) Convention of 1965 (No. 123) in 1967. Some other ILO instruments would be ratified after the 1980s.

employed in the public or civil service. In 1978, a housing policy was formulated,<sup>45</sup> which influenced shelter plans such as the upgrading of the Namuwongo low-cost housing<sup>46</sup> and the Masese Women's Self-Help housing projects, respectively located in Souteast Kampala and Jinja. In spite of this, the land tenure system coupled with the eventual collapse of the economy and social infrastructure in the 1970s and the 1980s, resulted, as was the case with other social services, in a decline in the provision for housing and urban development. The consequence was the 'rapidly growing informal settlements' in Kampala and other urban areas, which 'remain one of Uganda's most visible and telling urban poverty problems.'<sup>47</sup> It is this population that, in Kampala's urban setting, constitutes about 65% of its overall population that has to do with a 'lack of basic facilities and the absence of security of tenure'.<sup>48</sup>

## **2.2 The NRM/A Government and Housing between 1986-1995**

The period 1986 to 1995 marked the first ten (10) years of the National Resistance Movement/Army (NRM/A) government in which certain key developments can be considered to have a significant bearing on the realization of socio-economic rights. In the first instance, the government sought through various macro-economic policies to revamp the economy and the social infrastructure that had been left in tatters after years of political turmoil and economic mismanagement. This was epitomised in policies of liberalisation and the privatisation of government-owned enterprises; in the promotion of fiscal and monetary management and through the provision of improved incentives to the private sector and in the development of human capital through investment in education. Secondly, the government ratified key human rights instruments, including (on socio-economic rights) the ICESCR in 1987. In effect, there was now an obligation placed upon the government to guarantee 'an adequate standard of living', including the right to 'adequate housing.' The obligations with regards to housing would later extend to children with ratification of the CRC in 1990 and the ACRWC in 1994, although as regards women, these had occurred in 1985 with the ratification of CEDAW by the Obote II government. Thirdly, in 1992, the government adopted a National Shelter Strategy, which comprised the national housing policy and program for the improvement of housing conditions to 'ensure adequate shelter for all by 2000'.<sup>49</sup> Fourthly, by the end of 1995, the government had ushered in a new Constitution that included

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<sup>45</sup> See Ouma 1991.

<sup>46</sup> See Omwonya, 2001.

<sup>47</sup> Opolot, *supra* note 39, at 10.

<sup>48</sup> *Id.*

<sup>49</sup> GOU, *National Shelter Strategy*, 1992.

provisions, even if in only an ephemeral manner, on socio-economic rights, including housing. The new constitution also dealt with the rights of certain groups, including women and people with disabilities. The implications of these key developments need to be considered in more detail.

The policies of liberalisation adopted by the NRM/A government from 1987 were the epitome of structural adjustment programs (SAPs) thrust upon it and other African states in the 1980s by the IMF and World Bank. In Uganda, this was marked by the liberalisation of commodity trade, the divestiture of government utilities and the reduction of its role in the provision of certain key social services, as well as the retrenchment of civil servants. In spite of the glossy GDP growth rates that resulted, the SAPs would have an adverse impact, accentuating (as opposed to doing away with) poverty and social inequity and, in terms of socio-economic rights, not resulting in real benefits in health care, work, education and the overall standard of living.<sup>50</sup> With retrenchment and the abdication of the government's role in the provision of certain key social services, the cost of SAPs was evident in housing. It was also attended by the fall-out of rural-urban migration following the disappearance of services in the agricultural sector, the dismantling of parastatals and state enterprises with entrenchment resulting in further unemployment, the erosion of real income. The privatisation of shelter resulted in greater burdens being placed upon urban shelter.<sup>51</sup> Nuwagaba sums up the mire that SAPs placed on shelter in the wake of the economic collapse of the previous decades:

*Historically, the state has played a major role in urban shelter provision including allocation of public leasehold land ... construction of houses, renting for public officials and the provision of infrastructure and utilities (roads, water, electricity, etc.). This was as long as the economy was buoyant and government institutions such as the Uganda Electricity Board, Land Commission, Urban Councils and National Water and Sewerage Corporation were functioning properly. The 1970s saw the breakdown of government institutions, increased corruption ... and economic deterioration. The net impact was the deterioration in the government's capacity to provide decent housing and to promote housing investment. Since the early 1980s, adjustment programmes have further*

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<sup>50</sup> Oloka-Onyango 2000, 34-43.

<sup>51</sup> Nuwagaba 2000, 50-52.

*incapacitated government in shelter provision ... While previously government could virtually house all the public officials entitled to an official house, now it is up to government officials themselves to look for their own accommodation.*<sup>52</sup>

Ultimately, with a divesting of the responsibility to provide shelter and housing—an aspect reflected in the shelter strategy of 1992—the government disposed of pool houses in areas such as Kololo, Naguru, Bugolobi and Nakasero. The private sector snapped them up for sale and rent to the affluent.<sup>53</sup>

The ratification of the ICESCR in 1987 ostensibly placed socio-economic rights at the top of the policy agenda for the government. This would later be reflected in the policies on education, health, water and sanitation as well as shelter. However, although the indicators, in an economy positing an average annual growth rate of 5.5% since the early 1990s show that the key socio-economic activities (education, health care, clean water) have improved, the housing situation continued (and continues) to record a housing deficit. This is in part the result of the liberalisation policies and in part a consequence of the shelter strategy adopted in 1992. The National Shelter Strategy was based on what was dubbed ‘an enabling approach,’ whereby the government only played the role of ‘facilitator’ or ‘enabler’ as well as regulator, through legislative and policy measures with regards to shelter.

In effect, government abdicated the responsibility for the ‘provision’ of housing, opting to leave the exercise of increasing housing supply and improving housing quality to non-state actors, in particular, individuals and private estate developers. Ultimately, the main intention of the strategy was to ‘divest Government from the commitment to provide housing to civil servants’ who would ‘meet their housing needs through the private sector and individual home ownership.’<sup>54</sup> The housing sector was therefore left to the whims of market forces, with the urban poor and rural populations unable to meet the costs of housing. This was despite the fact that the strategy deferred to the facilitation and encouragement of ‘assistance to the socially and economically disadvantaged groups so as to alleviate their housing problems.’<sup>55</sup> The result was the divestiture and sale of government

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<sup>52</sup> Id., at 54.

<sup>53</sup> Id.

<sup>54</sup> ‘Brief on the National Housing Policy’, op.cit, at 2.

<sup>55</sup> Id.

pool housing and the condemnation of the urban poor to survival in shanty structures, lacking in social amenities, in the ever-expanding slum areas. The rural populace were left to do with their mud-and-wattle huts and houses.

The sanctification of socio-economic rights, including a right to housing, should have occurred under the 1995 Constitution. Since previous constitutions did not address socio-economic rights, and given the mandate to include other rights and freedoms, the Uganda Constitutional Commission took cognisance of the need to give effect to rights fostering a 'minimum standard of living.' Thus, in its report, the Commission observed as follows:

*Human rights to minimum standard of living have not been addressed seriously. The rights to food, health, clean water, human shelter, sufficient power and energy, easy transport and communication have been enjoyed only by some. Without these basic necessities of life, other human rights become virtually meaningless. Post-independence governments have squandered the country's wealth without doing justice to either the rural farmers or the urban and rural poor and without developing or implementing policies for fighting backwardness and abject poverty.<sup>56</sup>*

In the end, save for education, the socio-economic rights, viz., the rights to health, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits, were placed in the chapter on 'general social and economic objectives' in the National Objectives and Directive Principles of State Policy in the Constitution. The paucity of the recognition of socio-economic rights under the constitution was thus surprising, yet understandable when one looks at the recommendations and debates that preceded promulgation of the constitution.

In the end, the Commission felt disinclined to include the socio-economic rights that would come under the rubric of *minimum standard of living* largely on the premise that, firstly, they were not justiciable (that is, capable of enforcement or judicial review) and secondly, that the rights or values

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<sup>56</sup> *Report of the Uganda Constitutional Commission: Analysis and Recommendations*, UPPC, Entebbe, 1993, at 147, para 7.60 (my italics). The use of the phrase '*minimum standard of living*' parallels that of '*adequate standard of living*' used in international legal instruments.

they embodied could not be given immediate effect or realisation.<sup>57</sup> The Constituent Assembly debates on the bill of rights reflected a similar position, with arguments for the socio-economic rights being placed in the policy objectives and principles.<sup>58</sup>

### **2.3 The Movement Government and Housing since 1995**

The social and economic policies of the government from 1995 have largely been a continuation of those of the NRM/A period. Liberalisation, the divestiture of public enterprises and a reduced role of government in the provision of housing continue to define the socio-economic policies. Although now under review, the 1992 National Shelter Strategy, with its 'enabling approach', continues to inform and guide the housing sector.<sup>59</sup> This approach has witnessed the government put in place a legal and regulatory framework to address land tenure (and security of tenure), facilitate private home ownership and interests in housing units, improved access to housing and services on a self-financing recovery basis. This has been reflected in the enactment of laws such as the 1998 Land Act, the later Condominium Act and in fostering the house financing environment and facilities.

The enabling environment has further entailed an encouragement of the production of building materials and promotion of the role of the private sector in the provision of serviced land plots. The emphasis is on the facilitation of home acquisition and ownership through individual affordability and the protection of private property in land and housing in the wake of the further declining role of the government in the provision of shelter. The reform in land law, in terms of the 1998 Land Act, has been geared towards ensuring security of tenure, as has been the commodification of land in the land market. The divesting of government's role in the provision of shelter has witnessed the further sale of pool housing and housing units such as the Bugolobi, Makerere and Bukoto flats and bungalows.

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<sup>57</sup> *Id.*, at 159, para 7.102. The Commission felt that the socio-economic rights would act as a guide in implementation of the constitution and in government policies: *id.*, at 193, para 7.194.

<sup>58</sup> GOU, *Official Report of the Proceedings of the Constituent Assembly* (UPPC, 1994). See e.g. Lt. Gumusiriza Guma (rights that State is not ready to guarantee to be removed from the chapter on Fundamental Human Rights and placed under National Objectives and Direct Principles of State): *id.*, at 2114, (on possibility of suing government if there is no clean water in vicinity of Ibanda): *id.*, at 2115; Basoga Nsadhu (the practicality of objectives (on ESR) as impossible to fathom how Government will ensure 'free education for all, food, accommodation, good health ...'): *id.*, at 1335; Eriya Kategaya (objectives as beacons—for guidance but not for their enforcement as legal provisions): *id.*, at 1645.

<sup>59</sup> Interview with Assistant Commissioner, Human Settlements/Planning Operations, Ministry of Housing and Urban Development on October 10, 2006.

On its part, the condominium legislation has enabled the owners of newly acquired flats to hold property in the housing units. Although the National Housing and Construction Company has continued to construct and provide housing in, for instance, the Naalya and Lubowa estates, this has been for private purchase and ownership. In a liberalised commodity and market economy, the void left by a decline in the government's direct role in the provision of shelter has been filled by private estate-developers such as Akright and Jomayi. Ultimately, the government's role in housing for low-income and the poor has been limited to activities such as the Masese Women's project (phase II) and, with donor support, the Oli housing project (Arua) and the Malukhu slum-upgrading project (Mbale).<sup>60</sup> The other interventions in low-income housing have been by civil society organisations like Habitat for Humanity. Furthermore, the shelter situation has been marked by the threatened eviction of tenants, as was the case, for instance with the inhabitants of Naguru housing estates, while the vagaries of conflict and insecurity, particularly in the northern and north-eastern parts of the country, have greatly impacted upon access to shelter, evident in the phenomenon of the so-called 'night commuters.'<sup>61</sup>

It is notable that while the land and property law reform has reinforced private ownership, the land tenure system has remained lopsided and has not fostered shelter and settlement development.<sup>62</sup> Furthermore, while private home ownership has been encouraged, the 'dynamics of social differentiation and the implications of a market economy' have—in a situation of land scarcity in urban areas—placed the urban poor in ever-expanding informal settlements (and even pushed them into wetlands) where there is a serious 'lack of basic facilities and security of tenure.'<sup>63</sup> The dire state of shelter and human settlement in urban Uganda is outlined in the following statement:

*The majority of the urban population (ca 80%) are classified as low-income earners and lack access to adequate housing and infrastructure. The urban poor are crowded in slum areas, which happen to be the least serviced. Homelessness is common in the urban areas; and can entail total lack of shelter or temporary and often sub-standard shelter with virtually*

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<sup>60</sup> See *Ministerial Policy Statement for the Ministry of Works, Housing and Communications presented to Parliament for Debate on Budget Estimates, Financial Year 2002/3*, June 30, 2002, 48-49.

<sup>61</sup> See Amnesty International, 'Uganda: Children 'Night Commuters'', AFP 59/013/2005, Nov. 18, 2005.

<sup>62</sup> Opolot, *op. cit.*, at 11, Nuwagaba, *op. cit.*, at 56. See also Tumushabe 2003, 7-8.

<sup>63</sup> Opolot, *id.*, at 9-10.

*no security of tenure. As the urban population grows, there is an increasing scarcity of land for housing development. This makes land very expensive and out of reach for the urban poor. Part of the solution lies in the development of low-cost housing estates. The poor also tend to be 'displaced' into flood-prone and ecologically fragile areas. Wetlands are not only settled, but they are also mined for clay to make bricks, and for sand. Physical structures in urban areas are also generally poorly planned.*<sup>64</sup>

Within informal settlements, there is no impetus to invest in home improvement given the prospects of eviction, or to maintain social infrastructure where there is no sense of proprietorship and there are no credit opportunities for shelter investment.

In the ultimate, the adoption of new policies including decentralisation, poverty alleviation/eradication and of new legislation on land, local government and the environment as well of international instruments such as the Habitat Agenda and the Millennium Development Goals (MDGs) have necessitated a call for a review of the housing policy/strategy.<sup>65</sup> The goal of an envisaged new housing policy is to ensure that 'all Ugandans own and have access to *affordable decent housing in sustainable human settlements* by the year 2035.'<sup>66</sup> However, there has been no progress in the development of a new housing/shelter policy.

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<sup>64</sup> UNDP, *Uganda Human Development Report 2005* (2005) 51-52.

<sup>65</sup> 'Brief on the National Housing Policy', *op.cit.*, at 1.

<sup>66</sup> *Id.*, at 4. (emphasis added).

### **III. REALISING AND GUARANTEEING HOUSING FOR WOMEN AND PEOPLE WITH DISABILITIES**

With a population estimated at 24.7 million, 51% of whom are women and, using a WHO-recommended 10% of the population, at least 2.4 million are persons afflicted with disability. As is the case elsewhere in most developing countries, women and people with disabilities in Uganda have historically been discriminated and marginalized; they face acute conditions of poverty and have limited opportunities for accessing education, health, employment and suitable housing. The approach of legislation, policy and practice as well as the institutional frameworks which have been in existence have fostered gender inequity and the stigmatisation of disability.

Thus, from the colonial to the post-independence periods, women have borne the brunt of inequality in access to land, property and social services (e.g. education, health) while people with disabilities were regarded objects of charity and institutionalisation. However, since the 1970s and 1980s, developments in both international law and the local setting have sought to address the position and the rights of women and people with disabilities. International human rights law has addressed the right of access to *adequate or accessible* housing.<sup>67</sup> Locally, since 1986, there have been efforts to secure the rights of women and people with disabilities and to ensure access to basic social services including the rights to health, education, employment, shelter, etc. Having explored the state of housing generally, this part of the study examines how legislative and policy measures as well as other interventions have impacted upon access to housing by women and by people with disabilities.

#### **3.1 Recognizing Gender and Disability**

Recognised as marginalized by history, custom and tradition, the rights of women and people with disabilities are addressed under the 1995 Constitution. Gender equality is primarily envisaged from the perspective of women's rights. These are generally guaranteed under articles 32 and 33 of the Constitution. Nonetheless, gender equality is also embraced in the general principles on non-discrimination and due process encapsulated in article 21 of the Constitution.<sup>68</sup> Overall, gender equality is embraced in several other provisions<sup>69</sup> and its application, in practical terms, has been manifested in law and policy in the political and socio-economic spheres of life. The

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<sup>67</sup> Supra notes 14-16 and accompanying text.

<sup>68</sup> The additional inter-related provisions are those on the right of a family (article 31), property (article 28) and economic rights (article 40).

<sup>69</sup> See 1995 Constitution, National Objectives and Directive Principles of State Policy, objectives VI and XV; arts 78(1)(b) and 180(1)(b).

rights of people with disabilities are similarly guaranteed in the Constitution—in terms of respect and human dignity, non-discrimination and representation.<sup>70</sup> Furthermore, policies have been adopted to address gender relations and equality as well as disability. The key policies in this regard are the 1997 *National Gender Policy*<sup>71</sup> and the 2005 *Draft National Policy on Disability in Uganda*.<sup>72</sup> As its primary goal, the gender policy emphasizes, the mainstreaming of gender in all sectoral policies and programmes,<sup>73</sup> planning and development,<sup>74</sup> and that national *policy formulation* and *sectoral planning* addresses ‘gender concerns’.<sup>75</sup>

The draft disability policy envisions the participation of people with disabilities in all spheres of development. Furthermore, it identifies ‘conflict as a leading cause of disability’<sup>76</sup> and recognizes the vulnerability of people with disabilities in conflict and emergency situations, while *gender* and *age* in disability exacerbates their situation in accessing services.<sup>77</sup> While neither policy expressly addresses access to adequate housing, the call for gender mainstreaming and participation seems to enjoin taking into account gender and disability concerns in policy, planning and the provision of shelter.<sup>78</sup> Of interest—especially in the context of women and persons with disability (particularly those whose disability has been a consequence of conflict)—is the 2004 *National Policy for the Internally Displaced Persons*.<sup>79</sup> The IDP policy recognises the right to shelter including the attendant attributes of safety and security and of easy access to other socio-economic rights (e.g. food, water, firewood, health).<sup>80</sup> It also envisages the involvement and consultation of the IDPs and host communities, especially women, in shelter programs.<sup>81</sup> Significantly, a draft national housing policy that has since been

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<sup>70</sup> Id., objectives VI, XVI and XXIV(iii); arts 21, 35, 78(1)(c) and 180(1)(c). See Ndeezi 1999.

<sup>71</sup> GOU, *National Gender Policy* 1997.

<sup>72</sup> GOU, *Draft National Policy on Disability in Uganda* (June 2005).

<sup>73</sup> Id., at para. 4(1).

<sup>74</sup> Id., paras 4.2, 5.0 and 6.2-6.3. This is required in respect of, for instance, national action plans that address the environment, children and water (para. 7.3) and local authorities (districts and sub-counties) (paras 7.4-7.5).

<sup>75</sup> Id., paras 7.1((i)-(iii) and 7.2(1)&(iv).

<sup>76</sup> Policy on Disability at 2. The northern region, owing to a conflict that has been raging for over 19 years, has the highest rate incidence of disability with a rate of 4.4%, with Kitgum as most affected district at 7.7% Id.

<sup>77</sup> Id., 2-3. They are often powerless, excluded and marginalized in accessing emergency assistance: Id.

<sup>78</sup> The draft disability policy addresses other concerns of PWDs, including health, HIV/AIDs: id., at 5.

<sup>79</sup> GOU, *National Policy for the Internally Displaced Persons* (August 2004) 27-8, para 3.9.

<sup>80</sup> Id., at 28.

<sup>81</sup> Id.

shelved adopts a gender-based and disability-oriented approach to housing calling for strategies in respect of shelter projects targeting 'low income, women and other disadvantaged groups and rural areas.' The draft policy also envisaged the role, participation and consultation of women in shelter development.

Gender equality and disability have further found recognition and expression in several pieces of legislation including (quite significantly for women and people with disabilities) land legislation.<sup>82</sup> Access to land and security of tenure is crucial to housing and shelter rights. With regard to women, the other legislation includes that pertaining to, for instance, local government, succession and inheritance, and condominium holding.<sup>83</sup> With respect to people with disabilities, the legislation addressing rights and interests range from that on elections and voting, traffic safety, special education to health care and medical treatment.<sup>84</sup>

### **3.2 Non-Discrimination and Participation with respect to Housing.**

In recognising the freedom from discrimination and due process, the Constitution affirms gender equality and non-discrimination as regards housing and shelter. Furthermore, the fact that the national gender policy calls for gender mainstreaming enjoins that housing/shelter policies and programs are non-discriminatory. Thus, the draft national housing policy sets out, as one of its goals, addressing the 'issue of discrimination against women in land ownership.' The Condominium Act entitles sitting male and female tenants to acquire and own housing units in flats.

Participation as a concept has entered the language of rights. This is envisioned under the 1995 Constitution regarding the involvement of 'people in the formation and implementation of development plans and programmes which affect them.'<sup>85</sup> The participation takes various forms, firstly, representation on decision-making bodies<sup>86</sup> and, secondly, a direct role, involvement and consultation on activities. Modern practices as regards housing and shelter projects entail involving the beneficiaries in their conception and implementation. Participation and involvement informs a number of policies on the provision of shelter. The shelved draft housing policy envisaged the role, participation and consultation of women in shelter

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<sup>82</sup> See Land Act, Cap. 227, sec 28, 40. The legislation is more popularly known as the 1998 Land Act.

<sup>83</sup> See Benschop 2002, 51-79.

<sup>84</sup> Kangere, 2003 at 3.

<sup>85</sup> 1995 Constitution, National Objectives and Directive Principles of State Policy, objective X.

<sup>86</sup> Id., objective VI (On gender balance and fair representation of marginalised groups on all constitutional and other bodies). The Constitution and recent legislation tend to require at least 1/3 women representation or inclusion of at least one woman or one person with disability.

development, requiring that housing projects enjoin the consultation of ‘women on all aspects of shelter, both in the up-grading or maintenance of existing housing, the implementation of programmes for water and sanitation, the planning and delivery of services, health and social infrastructure, and in new construction.’ Similarly, in respect of resettlement of the internally displaced, the IDP policy envisages that ‘IDPs and host communities, especially women, are involved in shelter programs through consultation’.<sup>87</sup>

In spite of the non-discrimination provisions in the Constitution and the equality-oriented provisions in legislation, the practical reality is that women and people with disabilities have continued to be subjected to discrimination and discriminatory practices in terms of accessing resources, services and opportunities. Women continue to be discriminated against with respect to access to (and inheritance of) land and property, employment, access to loans and credit, etc. Yet these are crucial facets of the right of access to shelter. Even where discrimination is not apparent, it manifests itself in the form of ‘attitude-based exclusion.’<sup>88</sup> Lwanga-Ntale reflects on this with respect to access to credit and, in effect livelihoods, by people with disabilities:

*... [E]xclusion centred around obstacles to participation in livelihood activities, especially those of an income generation nature. Access to financial resources was noted to be a major factor in this regard. While there was no evidence of official policy by financial institutions to exclude disabled people from accessing loans, most disabled were on record for having been denied credit facilities in nearly all such financial institutions ‘simply because managers thought they had no ability to pay back’. People with disabilities were excluded from joining credit groups by able-bodied group members. In such instances, members of the groups feared that if allowed, disabled people would never be able to pay back their loans.<sup>89</sup>*

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<sup>87</sup> IDP Policy, op. cit.

<sup>88</sup> Lwanga-Ntale 2003, at 9-11.

<sup>89</sup> Id., at 10.

In any event, the non-discrimination and equality provisions are irrelevant in situations where access is non-existent in the first place. This was the case with the housing units in the flats in Bugolobi, Bukoto and Makerere, where the majority of the sitting tenants were men.<sup>90</sup>

On the other hand, participation of women and persons with disabilities in shelter projects has not been common. First of all, given the informal settlements, the reality is that tenants have had no say in the manner in which landlords design, develop or maintain shelter and social infrastructure. Secondly, with a decline in the role of the government in shelter development, this has seen the National Housing and Construction Corporation construct houses such as those in Naalya and Lubowa estates for sale to those who can afford to purchase them. The likely consumers are unknown, so participation is not pertinent. In fact, NH&CC constructs the housing 'shell' and the home purchaser completes the unit to his or her taste or liking. In effect, the participation in shelter projects is only relevant in the provision of low-cost housing for low-income earners and the poor. Even in such situations, although participation is a feature, it is often not undertaken satisfactorily or continuously, a case in point being the Namuwongo housing project, where the participation of women was perfunctory.<sup>91</sup>

Thirdly, participation is crucial in the design of individual housing units. In this regard, the role of women and people with disabilities has perhaps been evidently non-existent. Traditionally, gender roles in most Ugandan communities (with the notable exception of the Karamojong) have had men responsible for the construction of housing, while the role of women has been most prominent in housekeeping (i.e. cooking, fetching water, child care, etc). And yet, the shelter needs of women are intricately related to house design so as to ensure adequate space and the necessary facilities to perform their roles with minimum energy and stress.<sup>92</sup> This is particularly the case in the central and western parts of Uganda (although it is often the case in the east and north) where women participate in most domestic chores including the construction of shelter. Therefore, the participation of women in housing design is crucial in modern shelter endeavours, yet women are often ignored by men when planning for housing. The same participation is necessary, and yet is not sought, in shelter planning for people with disabilities. Nonetheless, the fact is that participation is becoming a key

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<sup>90</sup> In fact, top employees of NH&CC and property speculators had acquired most of the flats by paying goodwill to sitting tenants.

<sup>91</sup> Namugerwa 1997.

<sup>92</sup> Kyomukama 1999, at 11.

facet in the designing and formulation of projects and activities geared towards socio-economic development.<sup>93</sup>

### **3.3 Minimum Core Obligations as regards Housing**

The minimum core obligations as regards adequate housing and decent shelter include issues relating to the legal security of tenure, affordability, habitability, accessibility, location, availability of services, materials and infrastructure and cultural adequacy. The extent to which these obligations have been achieved with regard to the shelter needs of women and persons with disability is examined in the context of how Uganda has generally fulfilled its international obligations in light of available resources. The examination addresses the legislative and policy measures as well as other interventions in guaranteeing and realising housing/shelter rights.

#### **3.3.1 *Legal security of tenure***

Security of tenure entails ensuring that individuals are guaranteed legal protection against forced and arbitrary evictions, harassment and other threats. As an obligation, it calls for measures to be taken to confer legal security of tenure upon individuals, groups and households lacking such protection.<sup>94</sup> The state of shelter development in Uganda shows that, with the bulk of its urban population living in informal settlements, there is quite obviously a lack of security of tenure.<sup>95</sup> As noted above, a facet of this problem arises from the nature of the land tenure system in the country which has developed over the decades. Access to housing is invariably linked to land and, in effect, access to and control over land. Historically, the land tenure system has resulted in inequities in the control and ownership of land. This has particularly been the case with regard to women: contributing 70-80% of labour in agricultural production and over 90% in food production, women in Uganda are reported to own only 7% of land.<sup>96</sup> In the informal settlements, women (and the children they support) constitute a majority. They are the most affected by the lack of security of tenure and by discriminatory conditions as regards legal access to land and housing. In fact, the land tenure system, both in customary practice and through statutory form, has historically underscored gender inequity, with women having primarily only 'usufruct rights' without control and ownership.<sup>97</sup> In that context, women have had no control over the 'use of land' or the 'income derived from the

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<sup>93</sup> See Kyoyagala 1999.

<sup>94</sup> CESCR, General Comment No. 4 (1991), para 8.

<sup>95</sup> See *supra* notes 63-64 and accompanying text.

<sup>96</sup> Bikkako & Ssenkumba 2003 at 232, 245 and 276.

<sup>97</sup> *Id.*, at 234-253.

land' and often faced dispossession by male family members.<sup>98</sup> In terms of housing, this has meant that women have had no say in the use of land or incomes for shelter-related needs and have often been evicted from houses after the death of their spouses.

The 1995 Constitution and the post-1995 law reform efforts have endeavoured to address the problem of legal security of tenure within the context of access to and control over land. The constitution recognises the right to private property<sup>99</sup> and in terms of land and shelter it implicitly recognises women's equal right to access land and housing. The same is the case for people with disabilities. The Land Act of 1998 reaffirms the rights and interests of both women and people with disabilities over land. Crucially, legal security of tenure for women and people with disabilities as regards land is guaranteed under the Act. To that end, not only is access to land ensured, discrimination against women and people with disabilities (and children), by way of customs or traditions, that deny 'access to ownership, occupation or use of land or impose conditions that violate articles 33, 34 and 35 of the Constitution' is prohibited.<sup>100</sup> Further, the security of tenure is guaranteed by protecting women and people with disabilities against the disposal of land without their consent.<sup>101</sup> It is to be noted that the Act ensured security of tenure generally as a facet of shelter rights. For the urban poor, who mainly comprise squatters, the recognition of *bona fide* occupancy (*kibanja*) created a statutory, perpetual occupancy, with squatters protected against *arbitrary* eviction.<sup>102</sup> This has happened because landowners have to either buy them out (including the payment of compensation for any developments on the land) or allow the squatters to purchase the *bibanja* at market value and avail them legal titles. At the same time, the downside of this reality for urban shelter development cannot be ignored. As has been observed by Opolot:

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<sup>98</sup> Id., at 261-268.

<sup>99</sup> 1995 Constitution, art 26.

<sup>100</sup> Land Act, sec 28.

<sup>101</sup> Id., sec 40(1).

<sup>102</sup> Id., art. 39. See also Porter 2001, at 221-226.

*The 1998 Land Act has in effect frozen relations altogether – it is a mandatory ‘No Change’ for either party! You can have your land but you cannot evict me and therefore put it to the use you would have wished to. Likewise, a tenant in a ‘Muzigo’ can have that control over his shackle but he cannot go beyond because the owner of the land dictates that he shall not accept him or her to erect a permanent house on his land. So who is the winner?*<sup>103</sup>

The Land Act may have created security of tenure in land, but the reality is that eight years of the Act has not led to shelter improvement for the urban poor. And since the majority of the urban poor are women, their plight has remained one of struggling to survive amidst increasingly worsening social amenities. While security of tenure should be the impetus for the squatter for improved shelter, purchase of *kibanja* at market value and of building materials requires significant finances. And yet, a majority of the squatters exist below absolute poverty (earning less than US\$1 a day). In fact, the reality on the ground shows how squatters are unable to purchase the *kibanja* at market value and seemingly grateful for the law conferring on them an equitable interest. Hence, they engage middle-income earners to purchase that interest and retire to buy a piece of cheap rural land, leaving them with a tidy balance. The implications for shelter can at times be evident. For example, in the suburb of Najjera, located on the eastern outskirts of Kampala, a son working in London bought the *kibanja* interest at market value and expects to construct a proper house for his mother on the land.<sup>104</sup> Otherwise, the situation can be worse, where land brokers fleece a widow of the *kibanja*.

In any event, the security of tenure in respect of *kibanja* is in respect of privately owned land. It does not extend to public land (including urban-controlled land and ecologically-fragile areas such as wetlands). This explains the threatened eviction of tenants in the Naguru housing estate and the spate of evictions from wetlands. An instance is manifested in the shelter problems that people with disabilities in urban centres face. Often ostracised from their homes, they take refuge and shelter on the pavements in Kampala and other townships. Given to sleeping on pavements, urban authorities have, on occasion, forcibly removed people with disabilities and other homeless

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<sup>103</sup> Opolot, op. cit., at 11.

<sup>104</sup> Interview with one Sarah Nakiwala on June 6, 2006. The son, Charles Mbigiti, purchased the 0.22 acre piece of land for the sum of US\$5,200,000=.

persons from the streets consequent upon their anxiety to clear the streets in the wake of a visit by a foreign dignitary.<sup>105</sup>

The condominium law also created legal security of tenure with respect of access to the individual ownership of units (flats/apartments) in common property. Thus, it allowed for sitting tenants in the Bukoto, Bugolobi and Makerere flats to acquire home ownership without title to physical land. The reality though is that women and people with disabilities were not the beneficiaries of the exercise, given that the majority of the sitting tenants were both men and able-bodied. On the other hand, given that the bulk of the urban poor and a significant portion of the middle-income earners live in rented housing, there is no security of tenure in that regard. The odds of eviction are high, resulting from the non-payment of rent to the desire of the house-owner to use or sell the property. Although rent restriction legislation regulates the relations between tenant and landlord, the legislation has been in disuse.<sup>106</sup> Most notably, in defining a 'tenant,' the legislation includes a widow of a deceased tenant,<sup>107</sup> the usefulness of the provision only being to allow the widow to take over the tenancy obligations of her deceased spouse. This protection of a widow's right to shelter in rented housing is however fragile, for as is often the case, owing to the lack of her own sources of income, where the husband was the sole bread-winner, rent-payment problems set in and the landlord exercises rights of eviction and distress.<sup>108</sup>

The recognition of a right to property and of a widow's rights upon the death of her spouse is pertinent in securing women's rights to shelter and housing. Laws, including those on land and succession,<sup>109</sup> have affirmed women's property and shelter rights. Practice, however, tends not to reflect the

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<sup>105</sup> See *Ogwal Safi Ali & Others v. Kampala City Council*, Complaint UHRC No. 280/1998 (a complaint filed before the Uganda Human Rights Commission in respect of arrests and eviction of homeless and disabled persons at the former UTC offices in the run-up to the visit of US President Bill Clinton in March 1998). The Kampala City Council would later make available a piece of land next to the bus park and eighty people formed the Kampala Disabled People's Business Association: O'Toole, C.J., 'Disabled Women And Independent Living in Brazil, Germany, Great Britain, India, Japan, New Zealand, Nicaragua, Russia, South Africa and Uganda', *Disability World*, Issue No. 4, Sept.-Oct. 2000, accessed at <http://www.disabilityworld.org/Aug-Sept2000/Women/MIUSA.htm>. Women have suffered similar fates of high-handed evictions from livelihoods in the streets: *Betty Nakiyingi v. Major Kakooza Mutale & 2 Others*, Complaint UHRC No. 337/1998 (arrest in March 1998 on grounds that the complainant's kiosk in Kisenyi along Kafumbe Mukasa Road was a danger to the security of President Clinton).

<sup>106</sup> Rent Restriction Act, Cap. 210.

<sup>107</sup> *Id.*, sec 2.

<sup>108</sup> This was the case for a widow who failed, six months after her husband's passing, to pay the rent of US\$120,000/= p.m. and was evicted after accumulating two months arrears in rent. The landlord confiscated a music system to meet the rental arrears. Interview with one Namwanjje in Kyebando, where she is now residing in a US\$40,000/= p.m. two-roomed 'house', on June 11, 2006.

<sup>109</sup> Succession Act, sec 2, 28, 30.

enabling legal position. Thus, the security of tenure guaranteed by protecting women against the disposal of land without their consent seems to be under abuse by men in order to secure loans from financial institutions. It has thus become a 'formality for the man to turn up with his wife for her to append her signature to the mortgage forms.'<sup>110</sup> On the other hand, women continue to suffer the dispossession of property, including of their matrimonial homes, by in-laws and relatives. According to Ms. Gloria Basaza-Ocen, a Legal Officer at FIDA(U), although FIDA(U) does not deal directly with women's housing rights, a significant caseload of the NGO pertains to the dispossession of matrimonial homes.<sup>111</sup>

### **3.3.2 Affordable Housing**

Whether housing is affordable entails the realisation of the right to housing in financial terms. Therefore, the efforts to attain and maintain access to housing should be at such a level that does not compromise or threaten the attainment and satisfaction of other basic needs.<sup>112</sup> There is a further responsibility placed upon the State to ensure housing-related costs are commensurate to income levels and also for the State to protect tenants from unreasonable rent levels.<sup>113</sup>

Affordability is linked to finances. This is in terms of the ability to afford to purchase land and building materials for construction, purchase of a completed house or to pay rent:

*In view of the land system that exists in Uganda today, the right to adequate housing is almost synonymous with the ability of the individual or group to access land on which to establish adequate shelter, or the resources with which to access (rent) adequate shelter.*<sup>114</sup>

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<sup>110</sup> Interview with Micheal Karokora, Legal Officer, Housing Finance, on October 3, 2006. In fact, this concern was voiced by Bikaako and Ssenkumba while the Land Act was still a Bill:

...[C]onsent" is based on the assumption that all parties have equal power relations in marriage, which is not the case. Rather, given the unequal gender-based power relations, women's consent is presumed to be automatic once their husbands have made decisions. Withholding consent places women at risk of being abused or abandoned. Without equitable interests, women cannot give consent or restrict transfer of land. See Bikaako & Ssenkumba, *op. cit.*, at 275-276.

<sup>111</sup> Interview with Ms. Gloria Basaza-Ocen, Legal Officer, FIDA(U), on Oct. 4, 2006.

<sup>112</sup> CESCR, General Comment No. 4, para 8(c).

<sup>113</sup> *Id.*

<sup>114</sup> Waliggo, *supra* note 3, at 4.

The financial outlay to acquire housing is often considerable. In Uganda, where the urban poor, constituting 65% of the urban population, survive on less than US\$1 a day, affordability in respect of housing is generally low. Home acquisition and ownership through individual affordability—as advocated by the National Shelter Strategy—confines affordability to the affluent. This has further been accentuated by situating the right to shelter in a Uganda within market-based economy in the era of globalisation. Thus Rev. Fr. John Mary Waliggo has remarked:

*In actual sense, in this era of economic globalisation, ... [c]ommodification of housing has left affordability to the whims of the market and especially of those who own the resources. These are a minority while the vast majority are the poor who cannot afford.*<sup>115</sup>

Economic liberalisation, SAPs and fiscal dexterity on the part of the government in the past 20 years may have resulted in glowing GDP growth rates. However, there has been an overall increase in the levels of poverty and social inequity.<sup>116</sup> There has been an erosion of real income. With 38% of the total population poor, affordable housing is a pipe dream. Thus, the sale of pool houses and housing units in flats and bungalows have attracted only the affluent. The provision of housing in estates such as Naalya and Lubowa and private shelter development schemes such as those which are targeted by companies like Akright focus mainly on the affluent.<sup>117</sup> The urban poor are left to fend for their shelter needs in the informal settlements depending on the rent they can afford. Affordability is ultimately intertwined with the 'inadequacy' of the shelter. In effect, the poor are 'adequately housed in a purely physical sense' yet 'lack one or more entitlements associated with housing rights.'<sup>118</sup>

The condition of the urban poor ensures that they would rather have 'a roof over their head' and fore go clean water, sanitation, drainage and good roads. The rental charges depend on the space and amenities attached to the informal shelters. Thus, in a typical slum area, be it Kivulu, Bwaise, Kibuye or Kisenyi, a 1-roomed housing accommodation ranges from US\$10,000/= to US\$50,000/=. However, this will have an iron-sheet shielded bathing

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<sup>115</sup> Id. (italics added).

<sup>116</sup> Oloka-Onyango, supra note 50, at 23-6, 33-4; Nuwagaba, supra note 51, at 50-4.

<sup>117</sup> The average cost of home purchase in respect of the NH&CC units and the Akright units is between US\$35m/=to US\$200m/=.

<sup>118</sup> Waliggo, op. cit., at 5.

area, a communal pit-latrine, no electricity (if needed, an additional UShs. 5,000/= is payable), no kitchen area and there is poor drainage and road access is either a foot-path or a murrum road in a deplorable state. A 2-roomed accommodation may have a communal shared bathing area, open cooking areas or verandas and shared water source (outside tap) and priced at UShs. 70,000/= to Ushs 100,000/=.<sup>119</sup>

Accommodation with an inner flush-toilet and bathroom, kitchen, store, metered electricity supply will go for 120,000/= to 180,000/=. The more robust 2-3 roomed accommodation with garage and compound is the peri-urban variety, outside the slums but not in the upscale parts of the city and costs UShs. 200,000/= to 400,000/=. At the upper scale, rent ranges from UShs. 500,000/= to 800,000/= and 1,000,000/= to 5,000,000/= (the latter tends to be costed in US\$, i.e. from US\$500 to US\$3,000).<sup>120</sup>

With women constituting the majority of the urban poor, the tendency to forgo space and social amenities is all the more profound as they struggle to support (feed, clothe and educate) the children with whom they live in the informal shelters. The upscale accommodation is generally for middle-income earners and top employees of government and NGOs and expatriates. With regards to the rural poor, affordability is in respect of a grass-thatched hut. Amenities such as a granary, latrine, and bath-areas are additional and subsequent to the provision of sufficient sleeping room in huts. Most notably, in both the urban and rural setting, people with disabilities face many difficulties in terms of securing affordable housing. The very nature of the disability (coupled with social stigmatisation and discrimination) forces people with disabilities to reside with the considerate relatives or in isolated areas or in institutions.

The enabling approach of the national shelter strategy envisages the government facilitating 'home ownership' according to 'affordability'.<sup>121</sup> The ways of fostering affordability included a system of housing allowances, housing finance facilities, and assistance to socially and economically disadvantaged groups.<sup>122</sup> The provision of housing allowances was introduced

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<sup>119</sup> In one enclosure of 1-roomed accommodation in Karelwe, with a total of 15 units, rent was UShs. 60,000/=; however, energy-consuming appliances (e.g. hot-plates, cooking coils) were, in a 1-page set of rules, not permitted. According to the landlady, she preferred students as tenants.

<sup>120</sup> Compiled from information obtained in the field from housing/estate brokers and agents, May-June 2006.

<sup>21</sup> 'Brief on the National Housing Policy', op. cit., at 1. In fact, the Poverty Eradication Action Plan (PEAP), 1997/8-2000/1 acknowledged that among others, *access to credit* by especially economically active poor and often marginalized groups like women, the youth and people with disabilities contributes greatly to increased income, gainful employment and growth at the house-hold level.

<sup>122</sup> Id., at 2.

after divesting its role in providing housing for civil and public servants. The provision of housing finance has been the mainstay of the Housing Finance Company of Uganda Ltd. in affording opportunities for individuals to finance home purchase. However, with the processes of economic liberalisation, the provision of finance is now being undertaken by an ever-growing micro-finance industry. The assistance to socially and economically disadvantaged groups (that is, women, people with disabilities, etc.) has constituted the basis for government policies such as *Entandikwa* and, in the post-2006 setting, *Bonna Bagagawaale*. The question is whether these various means of fostering affordability have worked and, if so, whether they have been successful in ensuring access to adequate housing, particularly with respect to women and people with disabilities.

One of the ways of financing home ownership is 'housing finance' through loans or mortgages. The provision of housing finance has expanded beyond Housing Finance, with commercial banks, such as Standard Chartered Bank and DFCU, offering similar financial services. Typically, Housing Finance, Standard Chartered Bank and DFCU offer mortgage loans and unsecured credit facilities for residential houses worth between UShs. 10m/= and UShs. 200m/= . However, the details call for a credit-seeker to have an income or income-generating activity, an account with the bank, 30% of the cost of the house (or have a partially-constructed building) and substantial guarantors.<sup>123</sup> Invariably, these housing finance facilities can only be for affluent and middle-income earners, and it tends to be very difficult for women and people with disabilities to access such facilities.

Figures with regards to gender and disability in access to housing finance facilities at Housing Finance and Standard Chartered were not readily available. The Mortgage Manager and Legal Officer at Housing Finance observed that information as to figures of the number of women and people with disabilities accessing their facilities had never been disaggregated, noting that they were considering gathering this data, although for the purpose of 'developing appropriate mortgage packages,' rather than dealing with the disparities that this may reveal in their lending policies.<sup>124</sup> They however pointed out that renowned people with disabilities who have sought and obtained housing finance include the Members of Parliament representing the disabled, which underscores the point that there are obvious gender,

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<sup>123</sup> Housing Finance finances house purchase and the construction of incomplete housing while Standard Chartered Bank only finances house purchase. The repayment period at Housing Finance and Standard Chartered is between 5-20 years with an interest rate of 16-17%.

<sup>124</sup> Interview with David Ninyikiriza, Mortgage Manager and Karokora, Legal Officer, Housing Finance, on Oct. 3, 2006.

status and social stratifications that are not adequately addressed. Standard Chartered similarly had no figures, but put the percentages of the applicants, since their housing mortgage scheme commenced in February 2006, at 50% men, 30% joint and 20% women, while the figures for applicants with disabilities were not of foremost consideration.<sup>125</sup>

Closely linked to the above, is the provision of credit financing by micro-finance. Over the past 10 years, the micro-finance sector has expanded at a very rapid pace, as micro-finance institutions (MFIs) mushroomed and increased. Examples include Uganda Microfinance Union, Pride Microfinance, Commercial Microfinance, FINCA and, of particular interest to women, the Uganda Women's Finance Trust. These MFIs seek to address the needs of the poor by addressing issues of collateral and risk in rather unconventional ways. The reality though is that micro-finance is traditionally associated with financing micro-enterprise, that is, businesses. Therefore, it has not been the case for MFIs to finance home ownership, with the possible exception of the Uganda Microfinance Union.<sup>126</sup> Nonetheless, given that a woman or a person with disabilities is required to offer chattels (e.g. household items) as collateral, the loans assist in businesses as income-generating activities and realised profits are used to purchase land or to build a house.<sup>127</sup> While access to micro-finance has been readily available equally to able-bodied men and women, there continues to be, as Lwanga-Ntale has documented, attitude-based discrimination against people with disabilities in 'accessing credit facilities' and in 'joining credit groups.'<sup>128</sup>

The assistance to socially and economically disadvantaged groups has previously existed in the *Entandikwa* ('seed money') scheme. As a rural credit scheme, it was intended to address poverty eradication and improve the livelihoods of the rural poor. Such improved livelihoods would give way to improved access to decent shelter. The scheme was aimed primarily at women (34.6%), the youth (33.7%), men (30.5%) and people with disabilities (1.2%).<sup>129</sup> Although the scheme was greatly flawed in its application and eventually collapsed, as of 1999, it has been argued that improved livelihoods and shelter quality for women beneficiaries was evident as a result of the

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<sup>125</sup> Interview with Boris Conrach, Branch Manager, Speke Road Branch, Standard Chartered Bank (U), on Oct. 2, 2006.

<sup>126</sup> See Jordan 2001, at 10-11.

<sup>127</sup> *Id.*, at 10.

<sup>128</sup> Lwanga - Ntale, *op. cit.*, at 10.

<sup>129</sup> See Bekunda 1999 at 5.

programme.<sup>130</sup> The implications of the *Bonna Bagagawaale* scheme and capitalisation of Housing Finance for shelter development are yet to be known, since these policy goals are both still in nascent form.

### **3.3.3 Habitable Housing**

This entails housing or shelter which provides inhabitants with adequate space and protection from the effects of weather, threats to health, hazards and disease.<sup>131</sup> It is the reality that the state of urban and rural shelter in Uganda is deplorable, with 77% of the population living in sub-standard housing conditions, the urban areas constituted of slum dwellings, lacking sanitation and drainage amenities and the rural areas constituted of leaky mud-and-wattle constructions.<sup>132</sup> In fact, the 2002 census statistics show that only 17% of single household-occupied housing structures (with 10% in rural areas and 59% in urban areas) were made of permanent roof, floor and walls while 49% (with 55% in rural areas and 16% in urban areas) were of mud and pole-walls. This can largely be attributed to the lack of affordability so as to ensure quality and improved house conditions. With regards to the other attributes of habitable housing, certain features are also evident. First of all, the amenities that were put in place to cater for smaller populations in the urban areas such as Kampala in the 1950s and 1960s are now catering for 4 to 5 times those populations. The amenities have not expanded proportionally and, in most instances, have been depleted or destroyed without possibility of improvement or replacement.

Secondly, there has been no major investment in the financing of social amenities and infrastructure. The urban poor, constituting 65% of the urban population, bear the brunt of the inhabitable housing conditions in the informal settlement and wetlands they have invaded. In the informal settlements and the ecologically-fragile areas, they face the vagaries of nature (flooding during heavy rains) and frequent outbreaks of disease owing to congestion, poor water quality, pests and rodent vectors. The incidences of outbreak of 'diarrhoeal diseases' of cholera and dysentery in 1996, 1997 and 1998 were a manifestation of 'poor environmental sanitation.'<sup>133</sup> Women, children, people with disabilities (especially the physically handicapped) and older persons are those mainly affected by the inhabitability of the shelter conditions, since they remain in the homes or have no mobility. The same

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<sup>130</sup> Id.

<sup>131</sup> CESCR, General Comment No. 4, para 8(d).

<sup>132</sup> UBOS 2003.

<sup>133</sup> Luyima 1999, at 2.

is the case in the internally displaced persons (IDP) camps in Gulu (and the other districts of Katakwi, Kitgum and Pader). Shelter in these contexts primarily constitutes of polythene or sisal material 'roof' and supporting poles or sticks (See Picture 1) . On the other hand, shelter in the conflict areas of Northern Uganda has constituted pavements, verandas and sheds during the night for the 'night commuters.'<sup>134</sup> As with their counterpart homeless in urban centres, sleeping on verandas, is inadequate as shelter. The most vulnerable in both categories of pavement-dwellers are women, children and people with disabilities.

**Picture 1 – Typical shelter in Paboo IDP camp in Gulu in Northern Uganda**



### ***3.3.4 Accessible Housing***

Accessibility entails housing and shelter being available especially to those in dire need, that is, disadvantaged groups such as women, children, people with disabilities, persons living with HIV/AIDs and other vulnerable

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<sup>134</sup> Opolot, op. cit.

groups.<sup>135</sup> Firstly, the housing needs of these groups should be adequately reflected in legislation and policy and given a degree of priority consideration in programs. Secondly, housing should be accessible in terms of being available to these groups. Thirdly, housing or shelter should be accessible in terms of being *reachable* or *user-friendly* to all or some of these groups.

Both legislation and policies address the rights of women, children, people with disabilities, internally displaced persons and older persons.<sup>136</sup> However, only the Children's Act and the IDP policy expressly addresses housing rights. The housing rights of women, people with disabilities and other disadvantaged or vulnerable groups (including low income earners and the people in the rural areas) were addressed under the shelved draft national housing policy.

Accessibility in terms of physical availability of housing and shelter for women and people with disabilities is recognised in legislation and policy. However, this has not tended to translate into practical reality. The Masese Women's Self-Help housing project in Jinja affords a good example of efforts to provide low-income shelter for women. However, phase II of the project (2002-2005) has had difficulties with completion owing to lack of funding (its source being government and Jinja municipality).<sup>137</sup> Accessibility ties into security of tenure and resources. In other words, it is closely linked to access to land in which to establish adequate shelter, and resources (e.g. income) with which to access shelter.<sup>138</sup> Historically, women and people with disabilities have been denied access to land and excluded from or marginalized in income-generating opportunities. Ordinarily, the rural poor whose subsistence is based on land could be regarded as having access. However, access to clay, grass, trees, etc. ultimately constitutes access to *inadequate* shelter. Otherwise, within the context of the rural poor, the courts have addressed accessibility to shelter with respect to a judicial decision ordering exclusion from ancestral lands.<sup>139</sup>

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<sup>135</sup> CESCR, General Comment No. 4, para. 8 (e).

<sup>136</sup> GOU, *National Policy for Older Persons* (2005).

<sup>137</sup> Interview with Assistant Commissioner, Human Settlements/Planning Operations, Ministry of Housing and Urban Development on Sept. 14, 2006.

<sup>138</sup> Waliggo, *op. cit.*, at 4.

<sup>139</sup> *Abuki case*, *op. cit.*, judgment of Tabaro, JA (taking judicial notice of the dependence of rural population on land for subsistence and livelihood and that exclusion (or banishment) under the Witchcraft Act deprived accessibility to ancestral lands (for food and shelter).

Accessible housing is of great significance to people with disabilities. In fact, the socio-economic rights regime in international law recognises the necessity to ensure that people with disabilities have 'access to ... accessible housing'.<sup>140</sup> The accessibility in this regard relates to the user-friendly nature of housing or shelter. In Uganda, people with disabilities face both attitudinal and physical barriers in accessing social services. In terms of buildings, the physical barriers of access are manifested by the absence of ramps (often only stairways are provided) and of disability-assistive facilities or devices. In terms of shelter, the failure to ensure that structure in design and devices, accommodate the disadvantages of people with disabilities has made it difficult to access independent shelter opportunities. Indeed, as Bafariwala has noted:

*[T]he majority of people with disabilities have very little hope of accessing independent housing. Like the non-disabled, people with disabilities also wish to own their own homes. They have the same needs for privacy and dignity. However, the existing dwellings and the environment are often inaccessible due to poor design, infrastructure and overcrowding. This often forces PWDs into institutions against their wishes. Out of the hundred PWD respondents interviewed, it was evident that only 10 PWDs had personal houses. The rest were either dwelling with their relatives or renting. But the majority were staying in institutions and others on street pavements. Their plight is further aggravated by housing ...schemes which very seldom make provisions for barrier-free design that excludes PWDs from obtaining housing or visiting friends and relatives.<sup>141</sup>*

This demonstrates in bold relief that there is a major problem of access to housing for persons with disabilities. More importantly, there is a clear need for a more precise formulation of state policy to address their specific situation.

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<sup>140</sup> CESCR, Comment No. 5(1994), para 22 (emphasis added).

<sup>141</sup> Bafariwala 2003, at 45. See also Ssenoga 1999; 6, 8, 10.

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

The question of the availability of services, materials and infrastructure is a necessary corollary to the realization of the right to housing and shelter. It entails sustainable access to facilities and services in respect of health, clean water, food, energy, sanitation and refuse disposal, etc.<sup>142</sup> This is closely related to the issue of location, entailing access to employment opportunities, health care services, school, child care services and other social and recreational facilities.<sup>143</sup> The state of informal settlements in Uganda's urban areas is characterised by a major lack of the vital social services and amenities in form of safe water, proper waste management and disposal, sanitation and drainage, energy and adequate road network.<sup>144</sup> Often, facilities such as clean water is in the form of a water-pipe or tap or a borehole and is located a distance away. The drainage system is poor and, where it exists, is clogged with rubbish, waste and refuse. It is a common feature of slums for rubbish and waste to heap up in the neighbourhood, which become home to pests and rodent vectors. Part of the problem is the fact that the urban authorities provide intermittent waste disposal services. In fact, this occurs across the urban centre, even in sectors of the city that are more affluent, as it is common to find overflowing bins of rubbish in places such as Bugolobi, Gaaba, and Muyenga, among others. The difference is that the affluent are able to meet the costs of waste removal privately.<sup>145</sup> The lack of or the poor condition of social amenities and infrastructure makes informal settlements 'uninhabitable' and poses risks to health and life. Furthermore, there is the added problem of exploitation, violence (criminal and domestic) and insecurity, which particularly affects women, children and the disabled.

The contrast is however apparent in planned estates such as Naalya Estate. Apart from the planned neighbourhood, services include piped water, sewage facilities and access to a children's health care centre, as well as social and recreational facilities (in the form of bars, food catering, fuel station and supermarkets). There is also an adequate road network. The estate has attracted further private investments in social services in health care (dispensaries and pharmacies), education (boarding secondary schools), and additional housing by private entrepreneurs. This planned neighbourhood is however only accessible to the rich and middle-income earners. On the other hand, while there has been a mushrooming of housing in the urban

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<sup>142</sup> CESCR, General Comment No. 4, para 8(b).

<sup>143</sup> *Id.*, para 8(f).

<sup>144</sup> Luyima, *op. cit.*, at 2.

<sup>145</sup> The average cost of removal is US\$18,000/= to US\$35,000/= per month depending on number of days a week and place of residence: Interview with Managing Director, Bin-It Services Ltd., on Sept. 30, 2006. This figure is beyond the financial outlay of the urban poor struggling to meet costs of basic needs in food, clothing, etc.

centres since the 1990s in places such as Muyenga, Naguru, and Ntinda, in Kampala, this has been in a rather haphazard manner, such that infrastructural facilities and services (roads, drainage) were equally unplanned.

Notably, the programmes for low-cost housing have been designed with a view to making services and social infrastructure readily available. This is evident in the Namuwongo housing project, although evidence today shows that the area has been bought out and taken over by the affluent, including ministers and other top government officials. The several housing projects at the housing ministry, including Oli Housing Project in Arua (156 houses), Maluku Integrated Poverty Reduction Project, Mbale (400 houses) and Masese Women's Project—Phase II in Jinja (370 houses) are planned with related infrastructure services (roads, storm water drainage, health care and education facilities and creation of employment opportunities).<sup>146</sup>

### ***3.3.6 Culturally Adequate Housing***

The question of cultural appropriateness is an often overlooked aspect of the right to housing. In sum, this entails housing construction and materials allowing for the safeguarding or guaranteeing of cultural identity and diversity.<sup>147</sup> What is 'culturally adequate' depends on the community, people or groups exercising shelter rights. However, cultural adequacy does not entail the negation (but rather the adaptation) of modern technology as appropriate, and extends to facilities and infrastructure services (e.g. security, cooking and food preservation, inter alia.).

There are significantly diverse cultures and practices in Uganda. However, the cultural adequacy of shelter has arisen markedly as regards the state of informal settlements in urban centres and in particular relation to the situation of women. Cultural sensitivities have arisen in respect of water and sanitation which, as already noted above, is a key facet of 'habitable' housing and which in a majority of informal settlements is in a deplorable or inadequate state. The situation is such that toilet and bathing facilities are often limited and shared among several people and families. As a result, the inadequacy of sanitary facilities means they are lacking in cleanliness and privacy. Women have expressed concerns over certain 'traditions and taboos' that limit their access to sanitary facilities. This is especially the case during pregnancy and when in-laws are around, expressing anxieties over

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<sup>146</sup> *Ministerial Policy Statement 2002/3*, op. cit., at. 48-49.

<sup>147</sup> CESCR, General Comment No. 4, para 8(g).

using pit-latrines while pregnant and sharing facilities with in-laws, both of which are considered taboo in many Ugandan cultures.<sup>148</sup> The concerns expressed confirm the view over the ‘adequacy’ of sanitary facilities with regards to women, especially those living in informal settlements:

*[C]ertain traditions and taboos limit women’s access to sanitary facilities. Among many Ugandan communities, pregnant women are discouraged from using pit latrines and toilets, as it is believed that they will lose their babies down these holes. Women are not supposed to use the same sanitary facilities as in-laws such as son-in-law, father-in-law, mother-in-law, etc. In all above cases, women are forced to use the bush or where there is no bush to suffer discomfort as they sometimes wait all day to use facilities under the cover of night.*<sup>149</sup>

In that regard, the existing sanitary facilities in the informal settlements can be considered not to be ‘culturally adequate’ and, to that end, ‘in modern houses and homes, for these traditions and taboos to be observed, a married woman would need to have extra sanitary facilities’.<sup>150</sup> Quite clearly, this places an altogether different hue on the issue of housing and its access.

#### **IV. ASSESSING THE ROLE OF CIVIL SOCIETY AND PRIVATE SECTOR IN THE REALISATION OF HOUSING RIGHTS**

Since the State has largely divested itself of any significant role with regard to the provision of housing, except in respect of low-income housing projects, it has meant that non-state actors have had to step in to provide shelter. The role of non-state actors is envisaged under the 1992 national shelter strategy in the context of its ‘enabling approach,’ which has been manifest in respect of encouraging building materials production, serviced and non-serviced plots of land, and private participation in housing finance development. The civil society has grown and expanded over the past 20 years and they have had an unprecedented opportunity to play an enhanced role in the delivery of social services and advocacy with respect of socio-economic rights. Likewise, economic liberalisation has opened opportunities for the private sector to develop and engage in economic-oriented activities. The role of

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<sup>148</sup> Focus Discussion Groups with women in shelter settlements in Kyebando and in Naguru Go-Down held on Sept. 11, 2006 and Sept. 14, 2006 respectively. The FDG in Kyebando consisted of 11 women – 7 Baganda, 3 Banyankore-Bakiga-Banyoro and 1 Bagisu while that at Naguru Go-Down had 8 women – 3 Baganda, 3 Acholi/Lango, 1 Itesot, and 1 Sabiny.

<sup>149</sup> Kyomukama, *op. cit.*, at 11.

<sup>150</sup> *Id.*

civil society has been quite visible in the area of human rights, good governance and humanitarian assistance. Over the years, human rights NGOs and community based organizations (CBOs) have been involved in advocacy, networking and litigation with regards to the rights of women, children, workers, refugees, prisoners, people with disabilities, persons living with HIV/AIDs, etc.

In some instances, the advocacy has been with respect to specific rights, e.g. health, reproductive health, food, or the environment. What is notable however is the paucity of advocacy work with regards to housing/shelter rights. FHRI, HURINET, FIDA(U), Akina mama wa Africa have all admitted to not having addressed shelter rights in their activities, although FIDA(U) considers its caseload and activities around the dispossession of widows of matrimonial homes to bear a significant relation to shelter rights.<sup>151</sup> NUWODU—an umbrella organisation for women with disabilities—has similarly not addressed shelter rights, with their priority being reproductive rights and education.<sup>152</sup> On the other hand, ISIS-Wicce has some interest in the issue of housing (among other socio-economic rights) in the context of women's rights and has dealt with shelter rights in a number of their researches and studies.

Civil society intervention in shelter provision and development has been evident in the activities of Habitat for Humanity-Uganda (HFHU). Founded and operating in the housing sector since 1982, the organisation has constructed over 4,000 low-cost housing units at an average cost of US\$1,850 (approximately UShs. 3.3m/=). The organisation's role has been crucial in alleviating the housing needs of the rural poor and is spread out with 43 grassroot affiliates in 18 districts. The shelter activities of HFHU involve utilisation of 'locally available and technologically appropriate materials' in availing 'habitable', 'accessible' and 'affordable' housing.<sup>153</sup>

The involvement of the private sector in the housing sector has been steadily growing over the past decade. This has mainly been in form of land and estate brokers and dealers as well as estate developers. A significant feature in recent years has been the provision of serviced plots in planned estates and neighbourhoods – this has been undertaken by estate developers such as Jomayi Property Consultants, Hosana Real Estates and Akright Properties

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<sup>151</sup> Interview with Ms. Gloria Basaza-Ocen, Legal Officer, FIDA(U), on Oct. 4, 2006.

<sup>152</sup> Interview with Ms. Cissy Nalusiba, Information Officer, NUWODU, on Sept. 13, 2006.

<sup>153</sup> According to HFHU, the house cost is covered through an interest-free loan repayable over a period of 7-10 years, an amount that calculates to monthly payment of about \$8 (UShs. 15,000/=), which is a lower cost than what a family would pay to rent housing.

Ltd., although the latter have played a more significant role in providing 'shell' houses (in the way NH&CC has done, for instance, with its Naalya estate). While these activities have provided access to land and housing in planned neighbourhoods, the costs and pricing involved have meant that only middle-income earners can actually afford such housing opportunities.<sup>154</sup>

The Akright housing projects have been a boost in housing and shelter since they have saved home purchasers the hassle of searching for 'good-titled' land, building plans and, most importantly, the housing financing terms offered.<sup>155</sup> The banking sector, as part of the private sector, has seen its role in housing and shelter grow phenomenally over the past few years. Traditionally the forte of Housing Finance, commercial banks such as DFCU and Standard Chartered Bank are now playing a major role in housing financing. In the case of Standard Chartered Bank, although activities started only in February 2006, the housing financing extends to unsecured home purchase.<sup>156</sup> The growth in the micro-finance sector, as part of the private sector, has, while traditionally associated with financing micro-enterprise (rather than home purchase), boosted livelihoods and indirectly access to housing. The activities of institutions such as Uganda Microfinance Union (which has in fact been involved in financing home ownership), Pride Microfinance, Commercial Microfinance, FINCA and Uganda Women's Finance Trust have been significant.

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<sup>154</sup> The average cost of plots, which are often in areas at the outskirts of Kampala, is US\$ 5m/= to 10m/= depending on location and size: interviews with estate brokers at Jomayi Properties at Nakivubo Road and Hosana Real Estates at Wandegaya on Sept. 9, 2006. On the other hand, 'shell houses' offered by Akright at its Kirinya estate range from US\$ 35m/= to 60m/=: interview with the Desk Officer, Akright Properties office at Impala House, on Sept. 9, 2006. A visit to the Kirinya estate (2½ km from Namboole stadium) revealed that most of the house shells have been bought and a significant number completed and in occupation.

<sup>155</sup> According to the Desk Officer, Akright Properties offers house shells to purchasers who raise 30% of value of the house and enter into 'mortgage-like' terms, in conjunction with banks such as DFCU or the purchaser's bankers, for payment of the balance over a period of time: id.

<sup>156</sup> The house purchase financing is premised on 'income', existence of an account at the Bank and 30% of cost of the house. Thus, in the case of a person employed in public sector (government), the employment must be on permanent terms for another 15 years (as the repayment period), with 40% of monthly income multiplied by the 15 years as an indicator of what amount of finances can be accessed (inclusive of interest at 16-17% p.a.) – to that end, a 30-year employee with an income of US\$ 1m/= p.m. will have US\$ 80-85m/= available to finance house purchase (the total of 400,000 x 20 x 12 is 96m/= but this is inclusive of interest) and, in effect, with a 30% on cost of the house, the employee can afford to purchase a house of US\$ 120-125m/=: interview with Boris Conrach, Branch Manager, Speke Road Branch, Standard Chartered Bank (U), on Oct. 2, 2006.

## **V. SOME BROAD CONCLUSIONS AND RECOMMENDATIONS**

### **5.1. Conclusions**

The test of a State party's compliance with its obligations to guarantee and realize *adequate housing* is found in a general comment of the Committee on Economic, Social and Cultural Rights:

*A state party in which a significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant.*<sup>157</sup>

As of 2002, with 77% of its population living in sub-standard housing and shelter conditions, the Committee's test reflects a critical failure on the part of the government of Uganda to secure and guarantee 'adequate housing' and 'decent shelter.' Let us consider the basic obligations to recognize, protect, promote and fulfil against the fact that these obligations are to be undertaken to the maximum of the available resources in the country and their full realisation to be achieved progressively through appropriate means including legislative and other measures. The duty to recognize the right to adequate housing is achieved under the Constitution, and in legislation and policies, the latter, in underscoring the various attributes of the right with regards to women and people with disabilities, may underpin the duty to protect and promote. However, the existence of law and policy is not sufficient in itself. Policies, together with programmes, must be reasonably conceived and implemented within the context of the social, economic and historical realities of housing problems and needs and the capacity of the institutions responsible for implementation.<sup>158</sup>

The provision of housing for the poor and disadvantaged groups envisaged under the 1992 national housing strategy have not 'taken off due to lack of funding.'<sup>159</sup> And while available resources—which includes those through international cooperation and assistance—has enabled the implementation of low-income housing projects such as Oli housing project (in Arua) and Malukhu slum-upgrading project (Mbale) (both with DANIDA support), the reality is that the government cannot hide behind the excuse of the lack of resources (as it has often done with respect to socio-economic rights). This

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<sup>157</sup> CESCR, General Comment No. 3, para 3.

<sup>158</sup> Ssenyonjo 2003 at 25.

<sup>159</sup> See *Ministerial Policy Statement 2002/3*, op. cit., at 48.

is the case when one considers the defence component in budgeting for the past decade and, were it to happen, scandalous monetary allocations in respect of free vehicles to MPs to the tune of over US\$ 18b/=.

Furthermore, the progressive realisation of housing rights, while this does not call for immediate realisation, is not evident. The 1992 housing strategy had envisaged 'adequate shelter for all by 2000.' This has not occurred, and a new housing policy to ensure that 'all Ugandans own and have access to affordable decent housing in sustainable human settlements by the year 2035', is yet to be formulated.<sup>160</sup> Yet with increased income poverty, as admitted in the PEAP,<sup>161</sup> it is very difficult to envisage the rural and urban poor being able to afford 'decent' shelter in the not-to-distant future. In fact, even interventions by organizations such as Habitat for Humanity and micro-financing, which are themselves tied to income levels, have not benefited the significant number of the poor who wallow in a state of 'absolute' poverty.

## **5.2 Recommendations**

The state of housing and shelter in Uganda engenders several recommendations as regards the role of the state and of non-state actors in terms of housing generally and more specifically with regards to women and persons with disabilities. These include the following.

### ***5.2.1 Legislative, Policy and other Measures***

There is a need for the explicit recognition of the right to housing in the national constitution. The recent 2005 constitutional amendments seem to have accorded socio-economic rights more 'rights-based' attributes.<sup>162</sup> However, there is still a need to provide a more comprehensive legislation and policy on shelter and housing in order to effectuate the constitutionally guaranteed right. The legislation and policy should underscore a duty of the government to provide adequate, decent and affordable housing with special attention being paid to the vulnerable (including women, persons with disabilities and the poor). In the circumstances there given is an urgent need for a new housing policy that no review has been made since 1978. It is

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<sup>160</sup> 'Brief on the National Housing Policy', op. cit., at 4.

<sup>161</sup> GOU, *Poverty Eradication Action Plan, 2004/5-2007-8* (2004), at 12 to 26. Income poverty increased from 38% to 38% since 2000: Id., at 12-3.

<sup>162</sup> Previously recognised only in an ephemeral form in the National Objectives and Directive Principles of the constitution, article 8A (introduced in amendments to the constitution in 2005) lends a more legal and rights character to the state's duty as regards 'decent shelter' in objective XIV of the constitution.

imperative that the government reviews the housing policy and strategies. This is the gist of what the 'Brief on the National Housing Policy' mentions with regards to a proposed new housing policy that in fact envisages a more active and interventionist role in the government with respect to planning, development, and financing.<sup>163</sup>

To that end, the formulation of a new policy should be hastened. As regards legislation, there is an urgent need for a comprehensive legislation on housing beyond the scattered existing laws on land, succession, town planning, rent restriction, etc. The legislation would provide for benchmarks on housing, the activities of non-state actors, the participation of individuals, groups and communities in housing provision, and the establishment of an oversight body. Crucially, there should be significant involvement, consultation and participation in settlement planning and development, e.g. in respect of planned rural growth centres. Thus, consultation with and the participation of women, people with disabilities and other vulnerable groups is necessary and pertinent. As regards other measures, there is a need for increased budgetary allocations towards the provision of low-cost housing and infrastructural development.

### ***5.2.2 Activism and Human Rights-based Approaches to Housing***

There should be a 'human-rights based' (HRB) approach to shelter and housing concerns. To that end, the government should adopt an HRB approach to policy-making processes, for instance, with respect to economic policies such as poverty alleviation. In effect, the future PEAP and related plans should address housing and other economic activities (water, education, and health) from a human rights dimension. The HRB approach should inform the activities of other governmental and non-state actors such as NGOs, financial institutions, private estate developers, etc. Thus, the judicial protection by the courts of women and the other vulnerable groups with respect to shelter or housing should underscore and highlight the human rights angle to the protection. Courts and other quasi-judicial bodies in South Africa have already undertaken this approach.<sup>164</sup> In a sense, there should be judicial activism on the part of the courts to expound upon and further articulate the socio-economic rights in the national objectives of the 1995 Constitution. To the same end, civil society actors should take a proactive role in addressing housing rights not only through litigation (in terms of public interest litigation) but also through the traditional roles of advocacy

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<sup>163</sup> Gou (undated), op. cit., 4-8.

<sup>164</sup> See *Government of the Republic of South Africa & Others v. Grootboom & Others* (2000) (11) BCLR 1169 (CC)

by way of lobbying government in respect of policy and legislative measures, and influencing budgetary allocations. There is therefore a critical need for civil society and CSOs (especially those concerned with women and people with disabilities) to move beyond the socio-economic rights that most of them have concentrated on in order to tackle the crucial issue of housing and shelter rights.

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