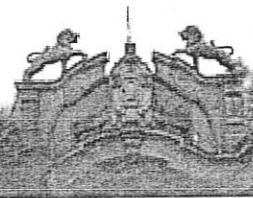




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**▲ COMPARATIVE ANALYSES OF THE HUMAN RIGHT
TO ADEQUATE HOUSING: INTERNATIONAL AND
REGIONAL PERSPECTIVES**

BY: BERHANU MOSISSA WAKJIRA

MARCH, 2013

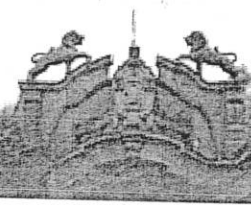




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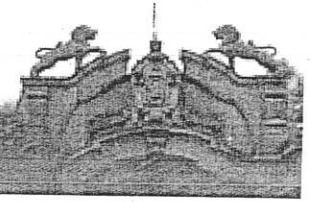
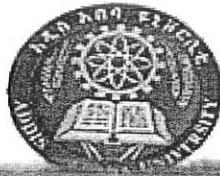
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**A Thesis Submitted to School of Graduate Studies, College of Law and Governance
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Declaration

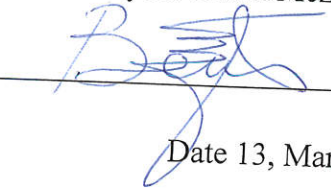
I, Berhanu Mosissa Wakjira, hereby declare that **"A Comparative Analyses of the Human Right to Adequate Housing: International and Regional Perspectives"**, is original and my work which has never been presented in any other university or academic institution for any degree or examination. I also declare that all sources and materials used have been duly acknowledged in this thesis.

Student: Berhanu Mosissa

Date 13, March 2013

Supervisor: Dr. Benyam Dawit Mezmur

Signature



Date 13, March 2013

Approval Sheet Signed by the Board of Examiners

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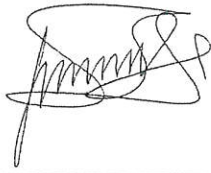
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II. Abstracts

The human right to Adequate Housing is an evolving and at the same time controversial issue in global and regional human rights systems. This right was recognized as one of economic, social and cultural rights which is the component of the right to an adequate standard of living under international human rights law. Despite the central place of this right within the global legal system, scholarly researches reveal that, over a billion people are not adequately housed; millions live in health threatening conditions or in other conditions which do not uphold their human rights and their human dignity at different parts of the globe. These facts are attributable to the non-compliance of States with internationally set standards of adequate housing and the disparities that exist among regional human rights system in giving emphasis on the key aspects of the human right to adequate housing. The sum totality of these regional disparities led to disparities in definition, interpretation, realization and a lack of adequate housing for the majority of urban population at different corners of the world.

This paper will focus on assessing the key aspects of the human right to adequate housing under universal human rights system in comparison with major regional human rights systems. For the purpose of this thesis the key aspects of the human right to adequate housing include: normative contents; duties of States; the constituents of violations; remedies upon the materialization of violations; and monitoring the implementation of the housing rights. The paper argues that there are great disparities in formulating the key aspects of the human right to adequate housing. The paper concludes that the African human rights system does not properly set the aspects of the human right to adequate housing even though it adopted the three in one approach, when compared to both international human rights law and the two major regional human rights system which do not adopt the same approach. The paper also concludes such defective formulation of the key aspects is not unique to African and that the three human rights systems- the Universal; the Inter-American; and the European share the same. The paper also argues the act of reading housing rights into general property right is not desirable.

Key Words: key aspects of human rights, adequate housing, housing rights, human rights, adequate standard of living, human rights law, human rights system.

III. List of Abbreviations and Acronyms

ACHR -American Convention on Human Rights
ACHPR -African Charter on Human and Peoples' Rights
ADHR -American Declaration of Human Rights
AU-African Union
CBOs -Community Based Organizations
CCP -Collective Complaint Procedure
CESCR- Committee on Economic, Social, and Cultural Rights
CHR -Commission on Human Rights
CERD -Committee on Elimination of Racial Discrimination
CoE -Council of Europe
CM -Committee of Ministers
CEDAW -Convention on the Elimination of All Forms of Discrimination against Women
ECSR-European Committee of Social Rights
ECOSOC -Economic and Social Council
ESCR-Economic, Social, and Cultural Rights
Et al-And Others
EU -European Union
ECHR-European Convention on Human Rights
IACHR -Inter-American Commission on Human Rights
ICRC -International Convention on the Rights of the Child
ICESCR- International Covenant on Economic, Social, and Cultural Rights
ICCPR- International Covenant on Civil and Political Rights
ILO-International Labor Organization
INGOs-International Non-Governmental Organizations
MDGS-Millennium Development Goals
NGOs- Non-Governmental Organizations
NNGOs-National Non-Governmental Organizations
No.-Number
Nos.-Numbers
NEPAD -New Partnership for Africa's Development

NHRIs -National Human Rights Institutions
OAU-Organization of African Unity
OAS -Organization of American States
OHCHR -Office of the United Nations High Commissioner for Human Rights
Para-Paragraph
Paras-Paragraphs
RESC -Revised European Social Charter
SERAC-Social and Economic Rights Action Center
UN-United Nations
UDHR- Universal Declaration of Human Rights
UNGA -UN General Assembly
UPR -Universal Periodic Review
UNHRP -United Nations Housing Rights Program
UN-HABITAT -United Nations Human Settlements Program
VDB -Violations Database
Vs-Versus

“All human rights are universal, indivisible and interdependent and inter-related. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”

(Vienna Declaration and Program of Action ,adopted by the World Conference on Human Rights, Vienna, 25 June 1993 (A/CONF. 157/24 , Part 1, Para. 5.)

“We Reaffirm our Commitment to the Full and Progressive Realization of the Right to Adequate Housing, as Provided for in International Instruments.”

(The Istanbul Declaration (Para.8) and the Habitat Agenda (Para.39)

“We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. “Necessitous men are not free men.” People who are hungry and out of a job are the stuff of which dictatorships are made. In our day these economic truths have become accepted as self-evident. We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all—regardless of station (position), race, or creed. Among these are...the rights of every family to a decent home.”

(Franklin D. Roosevelt, the Economic Bill of Rights, 1944)

Chapter One-Introduction

1.1. Background to the Research and Literature Review

Most governments in the world have signed multi-lateral international covenants declaring that all human rights are universal, indivisible and interdependent and inter-related.¹ That is, rights like the right to housing are as important as other human rights like the right to vote, freedom of expression, right to democratic election, right to life, and the like and that they rely on each other in order to be meaningful. For instance, the one who has no residential house has a very little or no chance in having a right to vote since the local authorities cannot issue identification card. This is palatable evidence that housing right is one of the fundamental human rights. The right to adequate housing is relevant to all States, as they have all ratified at least one international treaty referring to adequate housing and committed themselves to protecting the same through international conventions, declarations, resolutions, plans of actions, or conference outcome documents.² The recognition of this right by international community is slightly different from other categories of human rights. That is to say, international human rights law recognizes ‘everyone’s’ right to an adequate housing as one of the economic, social, and cultural rights and integral components of adequate standard of living. If it is under the purview of international human rights law, this universal norm and standards provide a powerful framework for ensuring the respect and protection of dignity, well-being and equality for all people, by simple virtue of their humanity.³

However, there are divergent views on the right to adequate housing amongst the States of the world, human rights activists, academia, and researchers. As it has been well established in international human rights law and its interpretation that housing is not just a physical structure of four roofs, and a wall, but should include various material and non material elements of

¹.Vienna Declaration and Program of Action, adopted by the World Conference on Human Rights, Vienna, 25 June 1993, Part 1, Para. 5,

([http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?)),OpenDocument

².UN HABITAT and Office of the United Nations High Commissioner for Human Rights-the Right to Adequate Housing, Fact Sheet No 21/Rev-1.2009,p.1

³.Risa Kaufman, Recommendations for Advancing Opportunity and Equality through an International Human Rights Framework, under the auspices of the Campaign for a New Domestic Human Rights Agenda ,Columbia Law School (www.law.columbia.edu/center_program/human_rights),last visited 15 November 15, 2012

adequacy which are necessary to create a safe and secure place to live.⁴ In this line the UN Committee on Economic, Social, and Cultural Rights (hereinafter CESCR) interpreted the housing right as the right to live somewhere in security, peace and dignity.⁵

The imperative of adequate housing for personal security, privacy, health, safety, protection from the elements like extreme coldness, extreme hotness, rain, wind and many other attributes of humanity based on universal principles, has led the community of nations to recognize adequate housing as a basic human right.⁶ It follows therefore that, adequate housing is not merely a desired goal and luxury. Secondly, most literatures and jurisprudences call it in plural-‘housing rights.’ Hence, it is a basic human right of all human beings. The justification is that the Universal Declaration of Human Rights(hereinafter UDHR) of 1948 recognizes the right to adequate housing of ‘everyone’ as an integral component of the human right to an adequate standard of living.⁷ On the basis of this provision, the right to adequate housing was elaborated and reaffirmed in 1966 by International Covenant on Economic, Social, and Cultural Rights (hereinafter ICESCR) which declares that the right to adequate housing is ‘everyone’s’ right.⁸ This implicates that the housing rights are fundamental human rights that should be accessed regardless of any ground for all human beings.

Beyond the UDHR, and the ICESCR, the right to adequate housing is provided in a dozens of international and regional human rights instruments.⁹ So, it is universally recognized human right, integral to the realization of several other human rights. However, as different research reports reveal, around half the world’s population, does not enjoy all the entitlements necessary

⁴.A Handbook on: UN Basic Principles and Guidelines on Development-based Evictions and Displacement,(2nded, November 2008),p.3

⁵.Committee on Economic, Social, and Cultural Rights, the right to adequate housing (Art.11 (1)), General Comment No.4, UNDoc 12/13/1991, Para.7

⁶.Kyra Olds, “the Role of Courts in Making the Right to Housing a Reality throughout Europe:” Lessons from France and the Netherlands, *Wisconsin International Law Journal*, (vol.28,No.1, 2010), p.8

⁷.Universal Declaration of Human Rights, adopted and proclaimed by the UN General Assembly in resolution 217 A (III) of 10 December 1948, at Paris, *Article 25(1)*

⁸.International Covenant on Economic, Social and Cultural Rights, adopted by United Nations General Assembly in resolution 2200A(XXI) on 16 December 1966, entered into force on 3 January 1976, *Article 11(1)*

⁹.International Convention on the Elimination of All Forms of Racial Discrimination, , G.A. res. 2106 (XX), U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force Jan. 4, 1969, *Article 5(e)(iii)*; Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. A/34/46, entered into force Sept. 2, 1981, *Article 14(2)(h)*;Convention on the Rights of the Child, G.A. Res. 44/25, U.N. Doc. A/44/49 (1989), entered into force Sept. 2 1990, *Article 27(3)*;the African Charter of the Rights and Well Being of the Child(1990),*Article 20*;the Protocol of the African Charter of Human and People’s Rights on the Rights of Women in Africa(2003),*Article 16*

for housing to be considered adequate.¹⁰ In addition, the CESCR defined its scope as it should contain seven core elements, which include: legal security of tenure; availability of services; affordability; accessibility; habitability; location; and cultural adequacy.¹¹ These are international baselines in order to consider a house is adequate so as to satisfy human dignity and to enable human beings to live decent life.

Now-a-days, the issue of the social, economic and cultural rights including the human right to adequate housing has got the attention of academic scholars; a plethora of organizations of UN and its Agencies; Non-Governmental Organizations(hereinafter NGOs) at different corners of the world; supra-national organizations; renowned human rights activists; and international community under the umbrella of their respective organizations. Various attributes contributed for such global concern. The terse formulation of the policy in the international legal regimes that dictate progressive realization of the economic, social and cultural rights in general and housing rights in particular. Secondly, the ideological influence, during the framing of the universal legal regime specially that of the UDHR and ICESCR. Third, the existing disparities in setting the key aspects of the human right to adequate housing under different human rights systems is highly influential. Fourth, the reaction against the justiciability of socio-economic rights on the one hand and the deficiency in having effective adjudicatory organ at universal level and in some regional human rights system accessible to everyone that entertains this 'everyone's' right, on the other made the rights handicapped.

According to some scholars such distinction attributed to historical definition of socio-economic rights including housing in that they are referred to as positive rights whereas civil and political rights are categorized as negative rights requiring non-interference from the State.¹² But, this author does not deny that such distinction is outdated since all rights are both negative and positive in the current international human rights system. Seen from the perspective of their

¹⁰. Supra Note 5, CESCR, General Comment No.4, Para.7 and 8,

¹¹. Ibid, General Comment No.4

¹². Adnan Abdul Sattar, Social & Economic Rights from Rhetoric to Reality-A Brief for Parliamentarians and Opinion-makers, LEAD House, (December, 2010),(www.lead.org.pk), last visited July 10, 2012, p.2. This author argues that, there is a symbiotic relationship(depends on each other) between traditional civil and political rights and socio-economic rights. Enjoyment of civil liberties and political freedoms requires access to at least a minimum core of social and economic rights such as the right to food, housing, clothing, basic health care, water, and sanitation and basic education. Similarly, a lack of basic freedoms can seriously hamper the process of development and exercise of socio-economic rights. So, the distinction does not stand when we consider budgetary allocations required to run and train law enforcement agencies to protect people's liberty and freedoms. In this perspective, all human rights are positive rights requiring similar corresponding duties from the part of States.

justiciability, traditionally, there has been hostility towards the judicial enforcement of socio-economic rights since they involve complex resource allocation so that best suited for decision by the democratically elected law makers.¹³ On the other hand, *Mbazira* contends that, alike civil and political rights, socio-economic rights including housing are capable of judicial enforcement; both rights engender positive and negative obligations; and have resource implications.¹⁴ According to *Mbazira*, it is, therefore, not proper for one to argue that socio-economic rights are not justiciable because they are resource dependent.

Kinsella argues that, the ICESCR provides so-called second generation rights such as rights to health care, labor rights, housing rights, and rights to education which are programmatic in nature which require the government of the state party to act and, among other things, create and enforce labor laws, build hospitals and employ doctors, build schools, and employ teachers.¹⁵ This line of argument leaves the enforcement of socio-economic rights at the wish and whims of the government on behalf of States parties to the ICESCR.

On the contrary, *Ocran* contends that, the so-called socio-economic rights including housing are not rights at all, but mere entitlements, privileges, or aspirations; and second, that because they are not rights, one cannot pursue them in the courts or quasi-judicial bodies.¹⁶ *Jackson* brings the justification why such was the case in that the broadness with which the socio-economic rights are provided and the weak, vague language of the obligations to undertake and enforce them is a direct result of the ideological differences that engulfed the drafting process.¹⁷ The author admits that such process left negative repercussions on the enforcement of socio-economic rights as compared to civil and political rights and persists to the present days.¹⁸ Similarly, *Brennan*

¹³.Asha P James, *the Forgotten Rights - The Case for the Legal Enforcement of Socio-Economic Rights in the UK National Law*, (2007), p.4

¹⁴.Christopher Mbazira, *Enforcing the Economic, Social and Cultural Rights in the South African Constitution as Justiciable Individual Rights: The Role of Judicial Remedies*, a Thesis Submitted in Fulfillment of the Requirements for the Degree of Doctor of Philosophy (Law) in the Faculty of Law, University of the Western Cape,(7 May 2007),P.86

¹⁵.Noël A. Kinsella, *Can Canada Afford a Charter of Social and Economic Rights?— Toward a Canadian Social Charter —A paper prepared for a Conference Entitled 'Chains & Links': Human Rights Activism Conference*, Saskatoon, SK ,(November 1-2, 2007), p.5

¹⁶.Modibo Ocran, "Socio-Economic Rights in the African Context: Problems with Concept and Enforcement," *Loyola University Chicago International Law Review*, Review Symposium,(Volume 5, Issue 1, Feb. 15, 2007),p.3

¹⁷.Laurie-Ann S. Jackson, "The International Covenant on Economic, Social and Cultural Rights:" A Critical Examination of the Relative Importance of Resource Constraints on Benchmarks and Benchmarking Processes in the African Context, University of Cape Town, Faculty of Law ,Department of Public Law,(October 5, 2007), p.17

¹⁸.Ibid, Laurie-Ann S. Jackson, the author maintains that comparisons between civil and political rights and pursuant to the existing perceptions of ESCRs as non-enforceable and not capable of immediate implementation still persist.

argues that Socio-economic rights, including housing rights are often criticized for being imprecise and vague that they are by nature, open-ended and indeterminate, and there is a lack of conceptual clarity about them and impose positive duties on states¹⁹ so that are positive rights that require states to take measures in certain ways. This holds true from the perspective of western ideology which celebrates the respect for the civil and political rights when compared to the Soviet bloc/socialist ideology who does not wonder if somebody/government officials kicks individual, but should not deny something to eat and somewhere to live.

Porter brings such attributes to *Article 2(1)* of the ICESCR which is more legalistic. According to this author, the implementation of economic, social, and cultural rights (herein after ESCR) in a dynamic and historical context, inextricably tied to the level of available resources and, ultimately, to notions of social inclusion and distributive justice, which has led some commentators in early years, and some governments even today, to assert that ESCR are more of policy objectives or goals of governments²⁰ than universally applicable human rights that can be adjudicated and enforced by courts. Hence, this latter argument substantiates the first line of argument that was attributable to the drafting process that backed by ideological partisanship. Thus, being programmatic rights or policy rights of socio-economic rights are not the inherent nature of the same.

Some argue that economic and social rights provide a fundamental standard of decency for evaluating our economic system and holding governments and private actors to account which cannot be taken away due to political changes or economic crises.²¹ This argument seems sound as these rights get the status of yardstick against which the decent life of human beings, and the economic system of certain State are measured that results in State responsibility for its failure of compliance and individual actors for their violation of these rights. Some argue from the

According to this author, these two issues are not only reflected in the legal and scholarly discourse developed to expound the Covenant as well as current literature on the subject but has also negatively affected the realization of ESCRs.

¹⁹.Mariette Brennan, "to Adjudicate and Enforce Socio-Economic Rights:" South Africa Proves that Domestic Courts Area Viable Option, *QUTLJJ*, (Vol. 9 No 1, 2009), p.70. This author contends that the rights lack accuracy because they fail to outline the extent and nature of the obligations that are imposed on a state and they are vague in regards to the timeline for state compliance as ICESCR imposes upon states an obligation of progressive realization.

²⁰. Bruce Porter, the Domestic Implementation of the ICESCR: The Right to Effective Remedies, the Role of Courts and the Place of the Claimants of ESC Rights, Remarks for the Workshop for Judges and Lawyers in North East Asia on the Justiciability of Economic, Social and Cultural Rights, Ulaan Baatar, Mongolia, (January 26, 2004) ,p.2

²¹.Radhika Balakrishnan... (et al), A Human Rights Response to the Economic Crisis in the U.S., *The Economic Crisis and Human Rights*, (June 2009),p.12

perspective of two long-standing philosophical objections to their justiciability. *Vierdag*, in *Langford*, who argue, in a somewhat circular fashion, that ESC rights were not legal rights since they were not inherently justiciable; and ESC rights were not justiciable since they involved issues of policy not law.²² However, *Langford* argues that the inclusion of ESC rights in constitutional bills of rights and international law means, *ipso facto*, that the rights are legal.²³ From the writer's viewpoint, defining and providing certain rights in international, regional, and international legal document lead to the conclusion that those rights can be adjudicated before judicial or other quasi judicial tribunals. This can be evidenced by the decision of the Constitutional Court of South Africa²⁴ which was breakthrough that brought far reaching effect on the nature of socio-economic rights at international, regional and national levels.

Sen in *Wiles*, views socio-economic rights from the perspective of basic necessities of human beings in that they conceived in terms of how a person can function, through activities like eating or reading or seeing, or states of existence or being, for instance being well-nourished, being free from malaria, not being ashamed by the poverty of one's clothing or shoes or housing."²⁵ The writer of this paper applauds that socio-economic rights are basic necessities of human kind and important instruments for the individuals' autonomy since the one who is destitute or in material distress has no alternative than saying alright for every order, or judgment even though she/he has grievance against that order or judgment. One incidental issue is at stake which needs short clarification- individual autonomy. Thus, autonomy refers to the ability to form one's own values

²².Malcolm Langford, "Domestic Adjudication and Economic, Social and Cultural Rights:" A Socio-Legal Review, Human Rights University Network, *Sur International Journal of Human Rights*, (vol.6, No.11,Dec 2009), p.97

²³.Ibid, On the contrary, two authorities *Waldron*,; and *Bellamy*, in *Malcolm Langford Domestic Adjudication and Economic, Social and Cultural Rights: A Socio-Legal Review*, Human Rights University Network, *Sur International Journal of Human Rights*, (vol.6, No.11,Dec 2009), p.97 provide two other philosophical and legal objections to the justiciability of ESCR: The first is the contention that adjudication is democratically illegitimate, since ESC rights require the legislature and executive to legislate, spend or adopt particular spending and policy priorities. The second persistent objection is institutional; that adjudicators are not suited to the task since not only do they lack the requisite expertise and information on economic and social questions but they are not in a position to resolve the competing policy considerations and consequences that would flow from their decisions. But, it is arguable that every area of law requires some level of specialist expertise and adjudicatory institutions have responded to the challenge of information by using specialist bodies and expert witnesses as well as accepting submissions from *amicus curiae* interventions, a phenomenon that has been embraced in ESC rights adjudication.

²⁴. Government of the Republic of South Africa and Others vs. Grootboom and Others, (2000)

²⁵. Ellen Wiles, "Aspirational Principles or Enforceable Rights?" *The Future for Socio-Economic Rights in National Law AM. U. INT'L L. REV.*, (2006), p.49. This author argues that to have autonomy and to be able to exercise choice, human beings need to be able to function in these basic ways, and socio-economic rights can therefore be considered "components of a commitment to individual freedom; as means of enabling civil and political rights to exist. The author exemplifies that, without being literate there is not much use for the right to freedom of speech, and without housing there is not much use for a right to privacy.

and to live one's life accordingly, the deprivation of which may result in the deprivation of both the physical and psychological integrity required for autonomy.²⁶ So, where a person is deprived these basic human needs, she misses these basic human values.

Coomans substantiates the above argument that socio-economic rights constitute a manifestation of such values like to achieve that people can live, work and develop to their fullest potential as human beings.²⁷ This author argues that socio-economic rights are also meant to correct the inequalities of the past so that the state is duty bound to respect, protect, promote and fulfill all of the rights listed in the Bill of Rights the duties which imply both negative and positive. *Ssenyonjo* sees socio-economic rights from its derogability or non-derogability nature that there is no clause allowing derogation in times of armed conflict, war, natural disasters or other public emergency in the ICESCR which indicates that the Covenant generally continues to apply, and pursuant to the jurisprudence of the CESR especially general comment number three that as minimum, states cannot derogate from the Covenant's core obligations.²⁸ This line of argument is selective that all socio-economic rights may not enjoy the same status as per the jurisprudence of the committee on ICESCR. What evolves the minimum core obligations would be the concern of chapter three of this thesis.

Dugard defines socio-economic rights from the perspective of its weight of enforceability in that one of the main reasons why socio-economic rights are not afforded the same enforcement weight as compared to civil and political rights is because the standard of implementation specified in the ICESCR - progressive realization to the maximum of available resources - differs

²⁶.Shareen Hertel and Lanse Minkler, Economic Rights: The Terrain, Economic Rights Working Paper Series, Working Paper 1, The Human Rights Institute, University of Connecticut, (January 2007), last visited July 10, 2012,p.16

²⁷.Fons Coomans, Reviewing Implementation of Social and Economic Rights: An Assessment of the "Reasonableness" Test as Developed by the South African Constitutional Court, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, (2005),(<http://www.zaoerv.de>),last visited June 11 2012,p.170

²⁸.Manisuli Ssenyonjo, "Reflections on State Obligations with Respect to Economic, Social and Cultural Rights in International Human Rights Law," The International Journal of Human Rights, (Vol. 15, No. 6, August 2011), (<http://www.tandfonline.com/loi/fjhr20>),last visited June 11,2012,p.990.To substantiate his argument the author makes reference to the *travaux pre'paratoires* of the ICESCR that do not reveal any specific discussion on the issue of whether or not a derogation clause was considered necessary, or even appropriate. The author further suggests that the possible reasons for the omission of derogation clause in the ICESCR are open to speculation. According to him, it is possible that this could have been as a result of a combination of factors including: the nature of the rights protected in the Covenant; the existence of a general limitations clause in the Covenant in its *Article 4* which allows states to respond flexibly to extraordinary situations of tension within a democratic society, including situations of emergencies, without a need for derogations; and the general obligation contained in *Article 2(1)* was 'more flexible and accommodating'.

are inadequately housed.³² As housing right is one of the fundamental human rights, individuals as well as families, are entitled to adequate housing regardless of factors such as age, economic status, groups or other affiliation or status.³³ Hence, the enjoyment of this right may not be subject to any form of discrimination.

The right to adequate housing is interrelated and indivisible from other economic, social, and cultural rights.³⁴ According to *Kotari*, the realization of the right to adequate housing is intimately linked to the realization of other basic human rights, such as the right to life, the right to protection of one's private life, of one's family, and one's home, the right not to be subjected to inhuman or degrading treatment, the right to land, the right to food, the right to water and right to health.³⁵ With regard to this, the CESCR identified some important elements to guarantee the right to adequate housing, including "sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services."³⁶

On the contrary, there are great disparities amongst the regions of the world to define the right to adequate housing with such universal standards. Furthermore, despite the fact that numerous international treaties, declarations and international dialogue on human rights officially proclaim an economic, social and cultural rights such as housing to be equal to, and indivisible from a civil and political rights such as freedom of speech, attention in some regional human rights laws have tended to focus on civil and political rights.³⁷ Putting otherwise, some regional laws consider these civil and political rights as superior hierarchically and chronologically, or not consider rights that are not civil and political as rights at all.³⁸

³² R.Martin Lees, *Human Rights Reference Handbook*, University for Peace, Costa Rica, (2004), p.272, (<http://www.upeace.org>), last visited on July 13, 2011

³³ Ibid, R.Martin Lees

³⁴ *The United Nations Non-Governmental Liaison Service (NGLS) Roundup*, Geneva, Switzerland, May, 2002, p.5, (www.unsystem.org/ngls), last visited July 16, 2011

³⁵ Miloon Kotari, Annual Reports of the United Nations Special Rapporteur on the Right to Adequate Housing to the Commission on Human Rights (2001-2005) and to the Human Rights Council (since 2006), in Brochure prepared by Christophe Golay (advisor of the UN Special Rapporteur on the Right to Food) and Melik Ozden (Director of the Human Rights Programme of the Europe-Third World Centre), p.5

³⁶ Ibid, Miloon Kotari

³⁷ Elisabeth Wickeri, "Groot Boom's Legacy: Securing the Right to Access to Adequate Housing in South Africa," *NYU School of Law*, New York, (2004), p.4

³⁸ Id, Elisabeth Wickeri, p.5,

On the contrary, as addressed in the background section, under international human rights law, all human rights are universal, indivisible, and interdependent and interrelated.³⁹ Interdependence and indivisibility means that priority should not be provided to certain rights or sets of rights.⁴⁰ Putting otherwise, the full enjoyment of certain rights is dependent on the full enjoyment of other rights.⁴¹ The United Nations Charter itself reflects the broader nature of human rights in its preambular statements, which calls upon all nations “to promote social progress and better standards of life in larger freedom”.⁴²

But, when we come to regional human rights systems, there are great disparities in setting and respecting the key aspects of the right to adequate housing which are the parameters against which the contents and realization of any human rights including housing rights are measured. These key aspects of the right to adequate housing include: what are the normative contents of the human right to adequate housing; the duty of States in relation to housing rights; what are the possible remedies when this right is being violated; how about the effectiveness and efficiency of the monitoring bodies and mechanisms; and the quality and extent of the jurisprudential development on the human right to adequate housing. In line with these both conceptual and practical concerns *Olowu* contends that despite the clear language of the African Charter, the abundant *travaux préparatoires*, and the views of the most distinguished African jurists, the implementation question of the economic, social and cultural rights provisions in the Charter remained unanswered.⁴³

The regional African human rights system is based on the African Charter on Human and Peoples’ Rights.⁴⁴ It adopts an integrated approach towards the concept of human rights,

³⁹.Supra Note 1, Vienna Declaration and Program of Action. In this World Conference it was reached on consensus that all human rights are universal, indivisible, and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural, and religious backgrounds must be born in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms, Adopted by the 171 Countries participating in the World Conference on Human Rights, held in Vienna from 14 June until 25 June 1993

⁴⁰.Ibid, Vienna Declaration and Program of Action

⁴¹.Chris Sidoti, Housing as a Human Right-National Conference on Homelessness Council to Homeless Persons, Human Rights and Equal Opportunity Commission, Sydney(1996),p.3

⁴².Charter of the United Nations, adopted by the San Francisco Conference on 26 June 1945 at San Francisco, entered into force on 24 October 1945, Preambular Statement 4th Paragraph

⁴³.Dejo Olowu, An Integrative Rights-Based Approach to Human Development in Africa, Pretoria University Law Press (PULP), (2009), (www.pulp.up.ac.za), Last Visited 14 November 2012, P.57

⁴⁴.Makau Mutua, “the African Human Rights System:” a Critical Evaluation, State University of New York, Buffalo Law School,(1989)P.4

enshrining the three traditional generations of human rights: the first generation of civil and political rights otherwise called libertarian rights or highly individualistic orientation rights; the second generation of economic, social, and cultural rights or egalitarian(equalitarian) rights; and the third generation of peoples' or group rights or solidarity rights in a single document unlike other universal and regional human rights instruments.⁴⁵ This is the innovative way of articulating rights so as to ease the protection and promotion of different categories of rights including housing.

However, the African Charter ignores some prominent socio-economic rights and failed to mention by name, such as the right to food and water or nutrition, social security, and housing.⁴⁶ Until the SERAC communication, individual communications pertaining to socio-economic rights rarely considered.⁴⁷ However, by the instrumentality of this jurisprudence the African Commission read some of the economic and social rights not listed in the Charter into the economic and social rights provisions that are part of the Charter by way of extensive interpretation in the same case.⁴⁸ This is self evidence that the definition, the normative contents, the standards, and the development of jurisprudence to elaborate on socio-economic rights in general and the right to adequate housing in particular in African regional human rights system are underdeveloped; unlike other universal and the Inter-American and European regional human rights systems. The three in one approach of the African Charter seems very innovative one so as to address the international value of indivisibility of human rights. But, this does not mean that the Universal; the Inter-American; and European Human Rights Systems achieved maximum perfection in formulating the key aspects of the human right to adequate housing.

On the other hand, the failure to elaborate this particular right in the African Charter may implicate whether African human rights system properly formulated the key aspects of the human right to adequate housing. The issues of direct and indirect justiciability of housing rights are also unsettled concern in the three regional human rights systems. Putting otherwise, the act

⁴⁵.Nsongurua J. Udombana, "Between Promise and Performance:" Revisiting States' Obligations under the African Human Rights Charter, Stanford Journal of International Law, (Winter 2004),p.9

⁴⁶. Supra Note 20,Bruce Porter,p.2

⁴⁷.Morne Van der Linde and Lirette Louw, "Considering the Interpretation and Implementation of Article 24 of the African Charter on Human and Peoples' Rights in Light of the *SERAC* Communication ,"African Human Rights Law Journal,(2003),p.167

⁴⁸.Social and Economic Action Rights Centre(SERAC) based in Nigeria and the Centre for Economic and Social Rights(CESR) based in USA vs. Federal Republic of Nigeria, Communication No.155/96,at 30th ordinary session held in Banjul, the Gambia from 13th to 27th October 2001

of reading the human right to adequate housing into general property right and procedural rights through jurisprudences is another critical problem in the three regional human rights system.

1.3. Research Questions

Inspired by the above research background, literature review and statement of problems, this research has the following main research questions:

- ✠ Whether the key aspects of the human right to adequate housing are properly formulated under the three regional human rights systems as compared to the universal one so as to achieve the international values the world community is celebrating?
- ✠ Whether the African human rights system recognized the right to adequate housing as fundamental, an independent human right and in an adequate manner as compared to other universal and the two regional human rights systems?

In addition to addressing these main research questions, this research has also the following sub research questions:

- ❖ Whether the key aspects of the human right to adequate housing are appropriately and adequately addressed under African human rights system as compared to universal and the two regional human rights systems which include:
- ❖ Normative Contents of the Human Right to Adequate Housing?
- ❖ The Duty of States pertaining to human right to adequate housing?
- ❖ The constituents of violations of housing rights?
- ❖ Provision of remedies upon materialization of violations of housing rights?
- ❖ Monitoring the implementation of the human right to adequate housing?
- ❖ Jurisprudential Development on the Human Right to Adequate Housing?
- ❖ Whether the act of defining housing right into property right is desirable?

1.4. Objectives and Goal of the Research

1.4.1. Research Objectives

Taking into account the aforementioned research background, literature review and statement of the problems, the main objective of this thesis is to identify the key aspects of the human right to adequate housing under international and in the three regional human rights systems. Thus, the following points are some of the specific objectives of this research paper:

- To identify the place of the human right to adequate housing under universal and in the three regional human rights systems.
- To make critical analysis of key aspects of the human right to adequate housing under the Universal and in the three human rights systems.
- To compare and contrast the normative contents of the right to adequate housing under universal and in the three regional human rights systems.
- To assess the formulation of State duties in realizing the right to adequate housing under African human rights system as compared to other universal and regional human rights system.
- To critically evaluate the normative frameworks on the violations of housing rights.
- To critically assess the provision of remedies where the right to adequate housing is being violated in the African human rights system as compared to other universal and in the two regional human rights systems.
- To identify the structural problems the monitoring bodies in Africa may have in realizing the right to adequate housing in the African human rights system as compared to other universal and in the two regional human rights systems.
- To critically assess the extent to which the jurisprudence developed on the right to adequate housing in the African human rights system as compared to universal and in the two regional human rights systems.

1.4.2. The Research Goal

The main goal of this research paper is to critically assess key aspects of the right to adequate housing under international and in the three regional human rights systems and to enable for the cross-pollination of these key aspects of the right to adequate housing and their penetration worldwide.

1.6. Scope of the Research

The rise in the number of the homeless due to the migration of people from rural to urban in search of better standard of living and people in inadequate housing and living conditions, rising prices in the housing sector affecting an increasing number of people with low and moderate income households in urban areas, are crucial concerns at every corner of the world. The extent of the concern given to the right to adequate housing, the way it has been defined, the disparity in

setting standards, the content enshrined therein, both the legal and moral values given, the ways of its realization and the emphasis given through jurisprudence are completely different seen from the universal and in the three regional human rights systems. This research, however, is confined to study both the conceptual and practical gaps in formulating the key aspects of the human right to adequate housing under international and in the three regional human rights systems. For the purpose of this study regional human rights systems means the Inter-American, European and African. So, the research deals with the housing rights of 'everyone' throughout the universal and in the three regional human rights systems.

1.7. Significance of the Research

The human right to adequate housing is one of the fundamental human rights which captured the attention of international community since long. To comply with minimal standards set by international community with the right to adequate housing under international human rights law is the adoption of comprehensive aspects of the right to adequate housing to eliminate homelessness and properly formulate and realize the same throughout the world.

When we come to international and regional human rights systems, however, there is no consistency in formulating the key aspects of human right to adequate housing against which this right might be evaluated, and implementing the intended universal values to address this international concern in different parts of the world. This may be partially attributable to the political will and whims (desires) of States; the level of civilization, the resource constraints (human resource inclusive), the prevalent legal tradition and drafting history.

There is currently no literature which looks specifically at the key aspects of the human right to adequate housing in international and regional perspectives especially in African regional context. Hence, as the research explores both the international and selective regional trends on the right to adequate housing against the key aspects of the same, the findings will be used by other researchers as a background for further study on the area worldwide. Secondly, it will influence the regional human rights systems to reconsider the international aspects of the right to adequate housing and the best practices of some of the regional human rights systems so as to amend some of their human rights instruments and redefine the right to adequate housing through protocols. Thirdly, it facilitates the cross-pollination of the human rights systems, legal standards, and common values on housing rights, so as to enable their penetration.

8. Research Methodology

The research formats or approaches that will be employed in this study are both comparative legal research and doctrinal legal research approaches. It utilizes comparative legal research since the very purpose of this research is to study legislative texts, jurisprudences, and legal doctrines of the universal and the three selected regional human rights systems so as to stimulate awareness of the cultural and social characters of the laws therein pertaining to the human right to adequate housing, the sum total effect of which has been beneficial in a legal development process where modification, amendment, and changes of the law might be recommended in the four human rights systems.

The research also utilizes doctrinal or qualitative research approach as the core objective of the study is to critically assess the key aspects of the human right to adequate housing under universal and in the three regional human rights systems. To do so the research utilizes analytical; descriptive; and evaluative (exploratory) research designs. Hence, this study includes five months of desk research which comprised of two different components: Primary and secondary data analysis. Accordingly, the data sources and data collection instruments are as follows. The data sources would be primary and secondary. The data collection technique depends on international and regional legal instruments such as treaties, protocols, Charters, Covenants, and jurisprudences as primary data so as to enrich the qualitative data.

Secondary data will be obtained from published and unpublished materials such as academic monographs; academic journals; dissertations; international reports; NGO reports; recommendations; resolutions; statements; research papers; policy papers; and policy practices; legal dictionaries; legal encyclopedias; declarations; and electronic searches, will be used, analyzed, examined, reviewed and cited in the texts and acknowledged under the heading "Bibliographic References". The research tools are mainly the Internet and the library.

9. Limitations and Delimitations of the Research

The researcher believes that the resource constraints like time, international commentaries and literature in hard copy in general and the total absence of some valuable materials on line and literature on this issue in particular and meager financial resources the researcher has, and the underdeveloped trend to fund research projects in Ethiopia may reduce the quality of this research. The concern of right to adequate housing is worldwide. Thus, the paper is expected to

address the existing human rights instruments and the inconsistency in its realization in relation to housing in entire regions of the world. However, as the nature of the research is for master's thesis so that time bounded, the researcher deliberately narrows down the scope to critically compare and contrast the key aspects of the right to adequate housing which are parameters to any human right, under universal and regional human rights systems in particular inter-American; European; and African ones. Special focus would be given to identify the conceptual and practical gaps the African human rights system may have as compared to universal and in the two regions concerning the right to adequate housing.

10. Organization of the Chapters

In addition to this introductory chapter, the research has also the following chapters which would have sections and sub-sections. Accordingly, the second chapter examines basic concepts like the elements of economic, social and cultural rights under the international human rights law. It also throws a light on the justifications for and components of the human right to adequate standard of living and entertains the definitional dilemma of the human right to adequate housing.

The six key aspects of the human right to adequate housing under the universal human rights system that enable one to understand the right shall be addressed under chapter three. These key aspects include: the universal normative frameworks; state duties; violations; possible remedies in case of violations of housing rights; monitoring; and jurisprudential development on the human right to adequate housing.

Chapter four focuses on the comparative analysis of the key aspects of the human right to adequate housing under the Inter-America; European; and African human rights systems taking the universal system as a universal norm against which these supranational systems are going to be evaluated. Chapter five winds up with the general conclusions made in the study so as to make some possible recommendations.

Chapter Two: General Overview

2.1. Introduction

The chapter is designated to discuss the elements of social, economic, and cultural rights; the justifications for and components of the human right to adequate standard of living; and definition of the human right to adequate housing. The economic, social and cultural rights under the international human rights law are rights from which the human right to adequate standard of living in general and the housing rights in particular are derived. It is difficult to provide exhaustive list of the rights as the grand human rights document ICESCR articulates the rights in open ended. So, the chapter may take into account some jurisprudences of the CESC that defined new rights and rights holders into the ICESCR.

Accordingly, section 2.2 devotes to identify the elements of economic, social and cultural rights. Section 2.3 tries to providing certain justifications for the human right to adequate standard of living and the essential components of the same; and section 2.4 deals with definitional aspect of the human right to adequate housing. Finally, the chapter winds up with concluding remarks under section 2.5.

2.2. Elements of Social, Economic and Cultural Rights

Things are under dynamic change with the change of human needs and advancement. So, it is difficult to exactly categorize the elements of social, economic and cultural rights in a clear legal and logical fashion without noting certain updated normative, scholarly writings, research outputs or jurisprudences. For instance, one author lists the elements of socio-economic and cultural rights as they consist of the right to education; the right to work and earn a living; the right to basic medical services; the right to social security; the right to fair housing; and the right to cultural life.⁴⁹ This is not exhaustive list and lacks sources from which these rights emanate.

According to *Sharei* the majority of these ESC rights are explicitly included in ICESCR (*Articles 6 through Article 15*).⁵⁰ The lists provided by this author are very much legalistic as he does not

⁴⁹.Supra Note 16, Modibo Ocran, p.2.

⁵⁰.Shahriar Mahmoud Sharei, *The Legal Strategies to Enforce Economic, Social, and Cultural Rights Violations Committed by States and Trans National Corporations – The Potentials of International Economic Law and the Utility of WTO*, (May, 2010), p.23. This author contends that these rights mostly derived from Treaties and inclusive

make no reference to jurisprudence or any other latest scholarly writings. In this regard the jurisprudences of the CESCR are reliable sources for the normative contents, lists and newly defined rights. For instance, the committee managed to read the rights to water and sanitation into the ICESCR through its General Comment No.15⁵¹, and the committee issued different general comments⁵² that give impetus to expand the scope and contents of those rights, the right holders and duty bearers under the ICESCR. It follows therefore that the human right to adequate housing is one of the economic, social, and cultural rights as a component of the human right to adequate standard of living.

2.3. Justifications for and Components of the Human Right to Adequate Standard of Living

2.3.1. Justifications for the Right to Adequate Standard of Living

The one who tries to define any category of human rights whether civil and political rights or socio-economic rights, or solidarity rights like the right to development, can easily grasp a single common denominator why that particular right is at stake. What is that single denominator deserves short clarification. To do so it is important to consider certain grand normative provisions of international human rights instruments. To begin with, it is worth to quote the fifth

of the international law doctrine of *pacta sunt servanda*, as per Articles 26 and 27 Of the Vienna Convention on the Law of Treaties and therefore are binding.

⁵¹. CESCR, the Right to Water, (Articles 11 and 12 of the ICESCR), *General Comment No.15* (2002). According to the committee, the use of the word “including” indicates that this catalogue of rights was not intended to be exhaustive.

⁵². Among others the General Comments in their chronological importance are: CESCR, the Right to Adequate Housing (Article 11.1): General Comment No.4, 12/13/1991, (1991); CESCR, Persons with Disabilities, General Comment No.5, 12/09/1994 (1994); CESCR, the Right to Adequate Housing (Article 11.1): Forced Eviction, General Comment No.7, 05/20/1997; CESCR, the right to education (article 13 of the ICESCR), General Comment No.13, E/C.12/1999/10, (8 December 1999); CESCR, the Right to the Highest Attainable Standard of Health (Article 12 of the ICESCR), General Comment No. 14 E/C.12/2000/4, (2000); CESCR, the Right to Work, Article 6 of ICESCR, General comment No. 18, E/C.12/GC/18, (Adopted on 24 November 2005); CESCR, Plans of Action for Primary Education (article 14 of ICESCR), General Comment No.11, E/C.12/1999/4, (10 May 1999); CESCR, the Right to Adequate Food (art. 11), General Comment No.12, E/C.12/1999/5, (12 May 1999); CESCR, the Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from Any Scientific, Literary or Artistic Production of which he or she is the Author (Article 15, paragraph 1 (c), of the ICESCR), General Comment No.17, E/C.12/GC/17, (12 January 2006); CESCR, the Right to Social Security (Article 9) General Comment No.19, E/C.12/GC/19, (Adopted on 23 November 2007); CESCR, Right of Everyone to Take Part in Cultural Life (art. 15, Para. 1 (a), of the ICESCR, General Comment No.21, GE.09-46922 (E), (21 December 2009); CESCR, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, Para. 2, of the ICESCR), General Comment No.20, E/C.12/GC/20, (2 July 2009).

paragraph of the UDHR Preamble which reads as “whereas the peoples of the United Nations have in the Charter reaffirmed their faith ..., in the dignity and ...”⁵³

Similarly, *Article 1* of the UDHR explicitly provides the common denominator this section searching for which reads as ‘all human beings are born free and equal in dignity and rights...’⁵⁴ Further, the first common paragraphs in the Preambular statements of the ICESCR and ICCPR are clear about the natural link between dignity and human rights which read as “considering that, in accordance with the principles proclaimed in the Charter of the UN, recognition of the inherent dignity and ...”⁵⁵. By the same token, other international human rights instruments provide the notion of such common denominator by making reference to the UN Charter and UDHR. It provides in its paragraphs one and two respectively as “... the Charter of the United Nations is based on the principles of the dignity and equality ...” and “... the UDHR Proclaims that all human beings are born free and equal in dignity and Rights and ...”⁵⁶ These are not exhaustive list of the human rights documents which address the common denominator of human rights.⁵⁷ The entire documents again have common reference-the UN Charter and UN UDHR.

Shue in *Hertel* and *Minkler* gives emphasis to basic rights, or the minimum reasonable demands that everyone can place on the rest of humanity categorizing the entire human rights into two: security rights otherwise civil and political rights and subsistence rights or socio-economic rights which in their turn grant human dignity.⁵⁸ Thus, dignity can be used to justify human rights since those rights assure and protect the intrinsic value of all human beings. It follows therefore that the source of all human rights is human dignity. Human dignity is the universal value at the heart of any human rights instruments so that common denominator for all human rights documents that the international community usually celebrates. Thus, the international community was

⁵³.Supra Note 7,UDHR, Para 5

⁵⁴.Ibid, UDHR Article 1

⁵⁵.ICESCR and ICCPR, First Common Paragraphs in the Preambular Statements

⁵⁶.Supra Note 9,ICERD,Paras 1 and 2

⁵⁷.For instance, Convention on the Elimination of All forms of Discrimination Against Women, adopted by the UN General Assembly in resolution 34/180 of December 1979 at New York, *Paras 1 and 2*;Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly in resolution 39/46 of 10 December 1984 at New York, Para 2;Convention on the Rights of the Child, adopted by the UN General Assembly in resolution 44/25 of 20 November 1989 at New York, *Paras. 1 and 2* provide this common denominator.

⁵⁸.Henry Shue in Shareen Hertel and Lanse Minkler, *Economic Rights: The Terrain*, Economic Rights Working Paper Series, Working Paper 1, The Human Rights Institute, University of Connecticut, (January 2007),p.15

striving to define the human right to adequate standard of living so as to achieve human dignity which is the source of all human rights.

2.3.2. Components of the Human Right to Adequate Standard of Living

Alike that of the economic, social, and cultural rights, it is difficult to mention with the specific numerals the components of the human right to adequate standard of living, since human needs are dynamic through change of time. Thus, these components include: the right to food, clothing, and housing; which are internationally recognized rights under UDHR, ICESCR and other human rights documents as components of adequate standard of living. So, normatively *Article 25(1)* of the UN UDHR recognizes the right to “food, clothing, housing and medical care and necessary social services, and ...”⁵⁹ Similarly, *Article 11* of ICESCR guarantees “the right of everyone to an adequate standard of living for himself and his family, including adequate housing and ...”⁶⁰

The CESCR interpreted the human right to adequate standard of living as including access to sufficient water and sanitation through its jurisprudence⁶¹ as discussed above. The right to an adequate standard of living requires, at a minimum, that everyone shall enjoy the necessary subsistence rights: adequate food and nutrition, clothing, housing and the necessary conditions of care when required.⁶² So, by reading the provisions of UDHR ; ICESCR and jurisprudence of CESCR together, the human right to adequate standard of living may include among other things adequate food, closing, and housing, water and sanitation.

2.4. Definition of the Human Right to Adequate Housing

Searching for a definition of the ‘human right to adequate housing’ is difficult as it is evolving right and interwoven with other rights. The challenge starts from its wide terminologies which are in use in different documents. For instance according to the United Nations Housing Rights Program a range of distinct terms are often used interchangeably to invoke the position of

⁵⁹. Supra Note 54, UDHR, Article 25(1)

⁶⁰. Supra Note 8, ICESCR, Article 11(1)

⁶¹. Supra Note 51, CESCR, General Comment No.15. The committee reached on this decision by interpreting the wording of the ICESCR which says ‘including’ as it does not imply exhaustive list.

⁶². Magdalena Sepulveda... (et al), Human Rights Reference Handbook, University for Peace, Ciudad Colon, Costa Rica, (3rd Rved, 2004), (www.upeace.org), last visited July 14, 2011, p.267. According to these authors, people should be able to enjoy their basic needs in conditions of dignity. No one should have to live in conditions whereby the only way to satisfy their needs is by degrading themselves or depriving themselves of their basic freedoms, such as through begging, prostitution, or forced labor.

housing as a core issue of human rights law which include, *inter alia*: the human right to adequate housing; the right to housing; the right to adequate housing; housing rights; the right to one's home; the right to shelter; land rights; livelihood rights; and the right to the city.⁶³ Pursuant to this report document, this diverse connotation is the reflection of the different manner by which the right to housing has been characterized under international legal norm.

One may be confused with such phrases like 'adequate housing' and 'decent shelter'. Accordingly, the phrases 'adequate housing' and 'decent shelter' are used interchangeably, yet they invariably refer to the same conceptual idea.⁶⁴ Onoria argues that, 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 fulfillment of human needs, providing security and shelter. The author adds that, while 'shelter' is the same as the 'house', it does not necessarily imply housing. This has some relevancy with the process of formulation and the *travaux préparatoires* of the Covenant.⁶⁵ Ismail substantiates this line of argument in that housing rights embody various rights which are inextricably linked to employment, access to services, health, security, self-identity and self-respect and dignity.⁶⁶ Hence, housing is not a single human right issue.

Tissington brings the same insight into the definition of housing right in that access to adequate housing is intrinsically bound up with a number of other cross-cutting rights, including rights to public participation, equality, human dignity, access to information and access to justice and with other socio-economic goods and amenities including access to land, water, sanitation, electricity, livelihoods, transport, clinics and hospitals, schools, universities and other cultural and

⁶³.UN Housing Rights Program Report No. 1, Housing rights legislation, Review of International and National Legal Instruments, Series of Publications in Support of the Global Campaign for Secure Tenure No. 05, Kenya, Nairobi,2002, (<http://www.unhabitat.org/unhrp/pub>),last visited July 10,2011,p.3

⁶⁴.Henry Onoria, Guaranteeing the Right to Adequate Housing and Shelter in Uganda: the Case of Women and People with Disabilities (PWDS), Human Rights and Peace Centre, HURIPEC Working Paper No.6,(2007) ,p.4

⁶⁵.Rajindar Sachar, the Realization of Economic, Social and Cultural Rights: The Right to Adequate Housing: Progress Report submitted by Special Rapporteur appointed pursuant to resolution 1992/26 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and Decision 1993/103 of the Commission on Human Rights, Geneva, Switzerland, (1996-2000),Para.24. The drafting debate also considered whether the word "decent" was more appropriate than the word "adequate" in highlighting the attributes of housing, food and clothing.

⁶⁶.Mohamed Iqbal Ebrahim Ismail, The Integration of Housing Rights into the Informal Settlement Intervention Process: An International Review, A research report submitted to the Faculty of Engineering and the Built Environment, University of the Witwatersrand, Johannesburg, in Partial Fulfillment of the Requirements for the Degree of Master of Science in Building in the Field of Housing, Johannesburg, (2005), p.41

recreational amenities such as parks, libraries, public spaces, swimming pools, sports fields and churches.⁶⁷

Ismail defines housing right in integrated way in that at international level, the right to housing possesses inherent aspects that link it to many other existing rights, such as those relating to privacy and family life, development, health, work, assembly and association, the rights of the child, the rights of women, freedom of movement, the right to property or land, the right to an adequate standard of life and the right to environmental hygiene.⁶⁸ Housing, like health or education, is not a commodity acquired if someone has money and lacking if she/he does not. Rather, it is the fundamental right of everyone, rich and poor and subsequently everyone has the right to culturally adequate housing— housing in accordance with his or her culture.⁶⁹ *Lewis* and *Skutsch* substantiate this line of argument in that as a human right, housing is an entitlement and should not be viewed as simply a commodity.⁷⁰ One can grasp from the above definitions that we cannot separately define any human right from housing right.

On the other spectrum of the definition of the housing rights, some scholars are not comfortable with the definition of housing rights into general property right. Accordingly, the right to adequate housing is not the same as the right to property, rather it is broader than the right to own property as it addresses rights not related to ownership and is intended to ensure that everyone has a safe and secure place to live in peace and dignity, including non-owners of property.⁷¹ According to the work of the Global Land Tool Network in the UN Fact Sheet 21, security of tenure, the cornerstone of the right to adequate housing, can take a variety of forms, including rental, accommodation, cooperative housing, lease, owner-occupation, emergency housing or informal settlements which is not limited to the conferring of formal legal titles.⁷² Putting

⁶⁷.Kate Tissington, A Review of Housing Policy and Development in South Africa since 1994, Socio-Economic Rights Institute of South Africa (SERI), (September 2010), P.30

⁶⁸.Supra Note 66, Mohamed Iqbal Ebrahim Ismail, p.52.

⁶⁹.Gil Gan-Mor, Real Estate or Rights: Housing Rights and Government Policy in Israel, An English Summary of the Association for Civil Rights in Israel's Report on the Right to Housing(ACRI)(July 2008) ,p.6

⁷⁰.James R. Lewis,& Carl Skutsch, Human Rights Encyclopedia, Sharpe Reference,Vol.1 (2001), (<http://www.freebooksource.com>), last visited July 14,2011,p.744

⁷¹.Supra Note 2,Fact Sheet,p.4

⁷².The work of the Global Land Tool Network (GLTN), facilitated by UN-Habitat, aims to take a more holistic approach to land issues by improving global coordination, including through the establishment of a continuum of land rights, rather than just focus on individual land titling in Office of the United Nations High Commissioner for Human Rights (OHCHR) and UN-Habitat Fact Sheet, The Right to Adequate Housing, Fact Sheet No. 21/Rev.1, Geneva, Switzerland, November 2009(Fact Sheet),p.4. It can also be argued that the right to adequate housing threatens the right to property as the latter has separate legal provision under international human rights law like the

otherwise, the right to housing is not the same as the right to own a home which is not in essence a property right, but a social right.⁷³ According to this report document, for instance the purchase of apartments may be a mission impossible for an increasingly large portion of the population due to non-affordability of apartments that may lead to eviction for defaulting on mortgage payments.

By the same token, *Richards* contends that being adequately housed is a basic human necessity and a pre-requisite to participation in the social, spiritual, cultural, political, and economic life of the community.⁷⁴ The concern of housing adequacy has jurisprudential backing of the CESCR through which the housing adequacy shall be measured and it should not be interpreted in a narrow or restrictive sense which equates it with the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity.⁷⁵ Rather the norm should be seen as the right to live somewhere in security, peace and dignity comprising: legal security of tenure; availability of services, materials and infrastructure; affordable housing; habitable housing; accessible housing; fitting location; culturally adequate housing.⁷⁶ This is the issue of adequacy of housing that is essential for human survival with dignity.

Two organizations prefer to call it in plural sense 'housing rights' and contend housing rights involve more than the right to access to shelter and they include the indivisible, interdependent, and interrelated all other human rights.⁷⁷ Other documents affirm this line of argument in that with the adoption of the UDHR in 1948, the right to adequate housing joined the body of international, universally applicable and universally accepted human rights law so that universal human right.⁷⁸ According to *Wickeri* the right to adequate housing is included in numerous

Universal Declaration of Human Rights(*Article 17*) and other human rights treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination (*Article 5 (d) (v)*) and the Convention on the Elimination of All Forms of Discrimination against Women (*Article 16(h)*), although absent from the two Covenants. The right to property is also enshrined in the American Convention on Human Rights (*Article 21*), the African Charter on Human and Peoples' Rights (*Article 14*), and the Charter of Fundamental Rights of the European Union (*Article 17*).

⁷³.Supra Note 69, Gil Gan-Mor ,p.8

⁷⁴.Steve Richards, Homelessness in Aotearoa: Issues and Recommendations, Regional Public Health, New Zealand, 2009, P.13

⁷⁵.Supra Note 10,CESCR,General Comment No.4, Para.7

⁷⁶ .Id, General Comment 4, Para. 8(a-g).

⁷⁷.Centre on Housing Rights and Eviction (COHRE) and The National Law Center on Homelessness & Poverty (NLCHP), Housing Rights for All: Promoting and Defending Housing Rights in the United States: A Resource Manual on International Law and the Human Right to Adequate Housing,(4thed, 2009,(www.cohre.org) and (<http://www.nlchp.org/>), last visited July 13,2011,p.20

⁷⁸.Supra Note 71, Fact Sheet 21, p.3.

international treaties and declarations as a fundamental human right.⁷⁹ It follows therefore that the above definitional frameworks address the human right to adequate housing is not a single human right issue. Rather, it is universal human right interwoven with other human rights and fundamental freedoms so as to sustain human dignity.

2.5. Concluding Remarks

The chapter identified the elements of economic, social and cultural rights; provided some justifications why the human right to adequate standard of living; and identified the essential components of the same by making reference to the existing jurisprudential values. So, the chapter concluded that the rationale behind the definition of the human right to adequate standard of living was for the attainment of human dignity. In addition, the chapter defined the human right to adequate housing as one of the components of the human right to adequate standard of living. Therefore, it is concluded that housing right is fundamental human right which is not a single right. Rather, it is a blend of economic, social, cultural, civil, and political rights, and development and peoples' right. That is to mean no right that cannot be defined into housing right which promotes the current indivisibility principle of human rights. As to the scope in terms of its claimants, it is the right of 'every one'-woman, man, child, persons with disabilities, indigenous people, refugee, internally displaced persons, victims of natural and manmade disasters. Finally, the chapter excluded the human right to property from definition of housing right as the latter is wider in scope capable of engulfing the former right.

The central theme of the next chapter would be critically defining and identifying the key aspects of the human right to adequate housing so as to identify the extent the international community exerted to put the right on the ground under the universal norm. These key aspects include: the normative framework for the definition, protection, promotion of the right; the duties of states; violations; remedies for the violations of right; monitoring the implementation of the right; and jurisprudential development on the human right to adequate housing under the universal human rights system.

⁷⁹.Supra Note 37, Elisabeth Wickeri, p.4. See also Kyra IODs, "the Role of Courts in Making the Right to Housing a Reality throughout Europe:" Lessons from France and the Netherlands, Wisconsin International Law Journal, (Vol. 28, No. 1, 2010), p.179.

Chapter Three- Key Aspects of the Human Right to Adequate Housing under Universal Human Rights System

3.1. Introduction

This chapter tries to address the six key aspects of the human right to adequate housing under the universal human rights system that enable one to understand the right under scrutiny. These key aspects include: the universal normative frameworks; state duties; violations; possible remedies; monitoring organs and mechanisms; and jurisprudential development on the human right to adequate housing. For the sake of convenience, the chapter is divided into six sections.

Under section 3.2, the universal normative frameworks of the human right to adequate housing that include the hard laws; soft laws; and others shall be scrutinized. The section is limited to discuss the sample laws as it is not possible to exhaust the list and define accordingly. Section 3.3 discusses the state duties on the human right to adequate housing. These state duties can be categorized into general duties; generic states duties; immediate duties; and duties fall under progressive realization. Section 3.4 shall scrutinize what acts of commission or omission constitutes violations of the human right to adequate housing.

Section 3.5 discusses the possible remedies where the violations of the right under consideration materialize. Section 3.6 duly probes the monitoring organs and mechanisms for the implementation of the right. The last section 3.7 shall examine the dilemma of the justiciability issue of the human right to adequate housing. Finally, the chapter winds up with concluding remarks. Hence, the chapter concludes that while measuring the human right to adequate housing against those key aspects, the international community exerted intensive effort to define, protect, promote, implement and realize the right to housing.

On the contrary, the chapter finds the challenge the international community faced to make a remedy and to put the right on the ground through jurisprudential values that is attributable to different factors among which are the lack of individual compliant mechanism under the ICESCR at its very inception and loose enforcement mechanism through reporting which merely depends on calling and shaming.

3.2. Normative Contents of the Human Right to Adequate Housing under Universal Human Rights System

Yabur defines normative content as a means of finding the description of the right.⁸⁰ Putting otherwise, the normative content describes the human life as valuable and basic requirements to preserve a human being's dignity. This author further defines the "normative content" as it describes, in generic terms, a basic requirement of a person that is recognized via the state by treaty or covenant.⁸¹ Hence, normative content of the human right to adequate housing provides legal standards or the normative frameworks that define, protect, promote, and regulate the same.

Kenna has a definition that strengthens the above normative frameworks on the human right to adequate housing. Accordingly, the right to adequate housing, as a distinct and unique component of international human rights law, finds recognition within a broad and diverse range of treaties, declarations, agreements, recommendations, resolutions and other legal texts.⁸² But, it is undeniable that the way the international human rights instruments define the human right to adequate housing is quite different. For the sake of convenience, the international instruments designed to address the housing right are classified into three big categories: hard laws; soft laws; and others, just to grasp the extent of international community's endeavor to set normative standards for the definition, promotion, protection, and implementation of the human right to adequate housing.

3.2.1. Hard Laws

A. The Universal Declaration of Human Rights/UDHR/

The status of the UDHR is a bit confusing. It can be argued that the UDHR is not a statement of law or of legal obligation but a common standard of achievement for all peoples of all nations. On the contrary *Ssenyonjo* contends that the UDHR, as an authoritative interpretation of the rights in the UN Charter, has had a considerable impact in shaping treaties protecting ESC rights including housing right at both UN and regional levels and has influenced the content of new constitutions or constitutional amendments in some states and upon decisions of domestic

⁸⁰.Pedro de Jesús Pallares Yabur, "the Human Right to Water and the Great Lakes Basin", Michigan State Law Review (Vol. 2006:1323 Special) ,p.1326

⁸¹.Ibid, Pedro de Jesús Pallares Yabur, the author exemplifies article 11(1) of ICESCR which describes "the right of everyone to an adequate standard of living including adequate food, clothing and housing."

⁸².Padraic Kenna, "International Instruments on Housing Rights", Journal of Legal Affairs and Dispute Resolution in Engineering and Construction, (February 2010 / 11), P.112

courts.⁸³ It can also be argued that, the coming into force of the two Covenants in 1966, the ICESCR and the ICCPR effectively translated the principles of the UDHR into treaty law, which makes the three documents together with the two optional protocols on the ICCPR- International Bill of Human Rights.⁸⁴ So, these arguments can help the transformation of the UDHR to customary international law that warrants the status of hard law.

Accordingly, *Article 25* of the UDHR provides the strongest normative reference pertaining to the right to adequate housing as "Everyone has the right to a standard of living adequate for ... himself and his family, including food, clothing, housing and ..."⁸⁵ The housing right under this document belongs to 'everyone'.

B. Covenant on Economic, Social and Cultural Rights/ICESCR/

By the same token, the ICESCR provides the notion of the human right to adequate housing and at the same time states duties to recognize and take measures for its implementation under its *Article 11(1)* which reads as "the States Parties to the present Covenant recognize the right of everyone to ... adequate ... and housing and ...".⁸⁶

C. The International Covenant on Civil and Political Rights/ICCPR/

Article 17(1) of this document protects the human right to housing which is one of the economic, social and cultural rights even though the very purpose of this instrument was devised to protect civil and political rights. But, the protection is more of procedural than substantive. It states "No one shall be subjected to arbitrary or unlawful interference with his ..., home or ..."⁸⁷

D. Convention on the Elimination of all Forms of Racial Discrimination (CERD)

Article 5(e) (iii) of this human right instrument also provides normative standard of the human right to adequate housing as "... States Parties undertake to prohibit and eliminate racial discrimination ...to guarantee the right of everyone... (iii)the right to housing".⁸⁸ Alike the

⁸³.Supra Note 28,Manisuli Ssenyonjo,p.970

⁸⁴.Office of the High Commissioner for Human Rights United Nations Staff College Project, Human Rights: A Basic Handbook for UNs Staff, (<http://www.unhchr.ch/html/menu6/pubs.htm>.), last visited 4 September 2012, p.10

⁸⁵.Supra Note 54,UDHR,*Article 25(1)*

⁸⁶.Supra Note 60,ICESCR, *Article 11(1)*

⁸⁷. International Covenant on Civil and Political Rights, adopted by the UN General Assembly in Resolution 2200 A (XXI) of 16 December 1966 at New York, entered into force on 23 March 1976,*Article 17(1)*

⁸⁸.Supra Note 56,ICERD, *Article 5 (e)(iii)*

above human rights instruments, this legal document provides the economic, social and cultural rights including housing right of 'every one' free of any form of discrimination.

E. Convention on the Elimination of all Forms of Discrimination against Women/CEDAW/

This international document provides the housing right normative framework under its *Article 14 (2) (h)* as "States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure... (h) ... particularly in relation to housing ...".⁸⁹ This normative framework is specific in two aspects. The beneficiaries are women. Secondly, not all women, but who are residing in rural areas. But, it is unique in that, it stipulates the right in mandatory legal provision-'shall'.

F. Convention on the Rights of the Child/CRC/

The CRC protects the child's housing right under its two articles. *Article 16 (1)* states "No child shall be subjected to arbitrary or unlawful interference with his or her...home or..." and *Article 27 (3)* states that "States Parties in accordance with national conditions and within their means shall take appropriate measures ... particularly with regard to ... housing".⁹⁰ The first one is procedural protection than substantive definition of the right. The second article provides strong substantive right, but leaves the implementation to situations in individual states which weaken the very spirit of the provision.

G. Convention Relating to the Status of Refugees

Article 21 of this specific instrument protects specific group which states "As regards housing, the Contracting States,..., shall accord refugees lawfully staying in their territory ...".⁹¹ The according of housing right to this specific group is subject to so many conditionality even though the provision seems strong (shall). On the contrary, it is not clear for those refugee unlawfully entered ones state since people may migrate due to unforeseen events which is beyond their control (economic, political, social,...reasons)

⁸⁹.International Convention on the Elimination of all Forms of Discrimination Against Women, adopted by the United Nations General Assembly in resolution 34/180 on 18 December 1979, entered into force on 3 September 1981, *Article 14 (2) (h)*

⁹⁰.International Convention on the Rights of the Child, adopted by the United Nations General Assembly in resolution 44/25 on 20 November 1989, entered into force on 2 September 1990, *Articles 16 (1) and 27 (3)*

⁹¹.International Convention Relating to the Status of Refugees, adopted by the United Nations General Assembly in resolution 429(V) on 28 July 1951, entered into force on 22 April 1954, *Article 21*

H. Convention on the Protection of the Rights of all Migrant Workers and Members of their Families/CMW/

Article 43 (1) (d) of this international document provides the housing right of this specific group which states "Migrant workers shall enjoy equality of treatment ... (d) Access to housing, including social housing schemes, and protection against exploitation in respect of rents".⁹² This instrument guarantees equal treatment in access to housing, including social housing schemes, and protection against exploitation in respect of rents to regular migrants and their families. The instrument plays dual role: granting access to housing and protecting migrant workers from unreasonable payment of housing rents.

These are actually not exhaustive list of the binding international human rights instruments devised to define, promote, protect and realize the human right to adequate housing either procedurally or/and substantively.⁹³ As to their nature, these instruments are more of labor and those intended to protect civilians from international and non-international wars. This implicates the magnitude the international community has given to the human right to adequate housing.

⁹²International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, adopted by General Assembly resolution 45/158 of 18 December 1990, entered into force on 1 July 2003, Article 43 (1) (d)

⁹³See also Convention on the Rights of Persons with Disabilities, Adopted by General Assembly resolution 61/106 of 13 December 2006, *Articles 9 and 28*; the International Labor Organization's 1989 Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, adopted by the General Conference of the ILO at its seventy-sixth session (Geneva, 27 June 1989), entered into force on 5 September 1991, *Articles 14, 16 and 17*-actually more is concerned with ownership of land and its possession, not specifically housing rights; International Labor Organization (ILO) Convention No. 161 Concerning Occupational Health Services, was adopted on 25 June 1985 and entered into force on 17 February 1988, *Article 5(b)*; International Labor Organization (ILO) Convention No. 117 Concerning Social Policy (Basic Aims and Standards), was adopted on 22 June 1962 and entered into force on 23 April 1964, *Article 5(2)*; International Labor Organization (ILO) Convention No. 110 concerning Plantations, was adopted on 24 June 1958 and came into force on 22 January 1960, *Article 88(1)*; International Labor Organization (ILO) Convention No. 82 concerning Social Policy (Non-Metropolitan Territories), was adopted on 11 July 1947 and entered into force on 16 June 1955, *Articles 4, 9(2) and 15(7)*; Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August, 1949, entered into force on 21 October 1950, *Article 53* which is more concerned and defined housing right into property right and its additional protocols- Protocol I Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, adopted on 8 June 1977 at Geneva, entered into force on 7 December 1978, *Article 69(1)* and Protocol II Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of Non-international Armed Conflicts, adopted on 8 June 1977 at Geneva, entered into force on 7 December 1978, *Article 17*; Rome Statute of the International Criminal Court, adopted in Rome on 17 July 1998, entered into force on 1 July 2002, *Article 8(a) (iv)*, actually which defines housing right into property right.

3.2.2. Soft Laws

There are several nonbinding declarations; general comments; recommendations; statements; and concluding observations; by the UN and its specialized agencies relating to housing as a human right. Even though they are non-binding, they have both conceptual and practical merits in providing important guidance for the elaboration of international law, promotion of the human rights in general and housing right in particular, to add contents to the rights and to influence the behavior of states. Where the international community is inspired by the very contents and purposes of the document, they can also easily be transformed to hard laws. For the purpose of this thesis, the general comments; recommendations; statements; concluding observations are limited to that of the CESCR and other pertinent UN organs and its agencies which have defined power pertaining to housing rights. Accordingly, the following documents are the samples of such instruments.

A. Declarations

There are different international declarations concerned with the human right to adequate housing. As indicated above some of these declarations are already transformed to international hard laws. But, for the purpose of this thesis such transformation or the amendment of certain instruments found to be immaterial since it was intended just to indicate the continuous endeavor the international community did, so as to define, promote, protect, and implement the housing rights worldwide. The sample declarations include the following.

Declaration on Social Progress and Development, under its Part II, *Article 10 (f)* provides that: "Social progress and development shall aim :...(f) the provision for all, particularly persons in low income groups and large families, of adequate housing ..."⁹⁴ This document addresses three universal values. The beneficiaries are all members of the society. Second, again the beneficiaries are selective those with low income and large families. Third, the standard of the housing right is not merely provision of shelter, but highly qualified-adequate.

⁹⁴.Declaration on Social Progress and Development, proclaimed by the United Nations General Assembly in resolution 2542 (XXIV) on 11 December 1969, *Part II, Article 10 (f)*

By the same token, Declaration on the Rights of the Child provides that "the child shall enjoy the benefits of social security. The child shall have the right to adequate nutrition, housing ..."⁹⁵ This document provides a dozens of rights for the child including for merely conceived ones. Similarly, the Vancouver Declaration on Human Settlements under its Section III, *Article 8* provides that "Adequate shelter and services are a basic human right ... Of special importance is ... housing and ..."⁹⁶ This framework creates good political insight on the understanding of adequate shelter and services as a basic human right.

Furthermore, *Article 8 (1)* of the Declaration on the Right to Development states that: "States should undertake, at the national level, all necessary measures ...equality of opportunity for all in their access to basic resources, ... housing,"⁹⁷ This reinforces the states' political commitment towards fulfilling housing right so as to achieve their development plans. The Millennium Declaration and Development Goals under the United Nations Millennium Summit was a crucial event in which the world leaders agreed to a set of goals and targets to combat poverty⁹⁸ one of which is housing poverty. They have also helped clarify various aspects of the right to adequate housing and have reaffirmed States' commitments to its realization.⁹⁹ For instance, Millennium Development *Goal 7, target 7(D)* to improve the lives of at least 100 million slum-dwellers by the year 2020.¹⁰⁰ These documents provide concrete goal with concrete target that capable of influencing the housing policies of states. *Article 9* of the Declaration on the Rights of Disabled Persons also provides that "... No disabled persons shall be subjected, as far as his or her residence is concerned, to differential treatment ..."¹⁰¹ Even though non-binding,

⁹⁵.Declaration on the Rights of the Child, proclaimed by the United Nations General Assembly in resolution 1386(XIV) on 29 November 1959,Paragraph 4;See also Declaration on the Elimination of All Forms of Racial Discrimination, was proclaimed by UNGA resolution 1904 (XVIII) of 20 November 1963, *Article 3(1)*

⁹⁶.Vancouver Declaration on Human Settlements, adopted by the United Nations Conference on Human Settlements in 1976, Section III, Article 8, See also Declaration on Race and Racial Prejudice, was adopted and proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 27 November 1978, *Article 9(2)*

⁹⁷.Declaration on the Right to Development, adopted by the United Nations General Assembly in Resolution 41/128 on 4 December 1986, Article 8 (1)

⁹⁸.Magdalena Sepu'lveda Carmona, "The obligations of 'International Assistance and Cooperation' under the International Covenant on Economic, Social and Cultural Rights:" A Possible-Entry Point to a Human Rights Based Approach to Millennium Development *Goal 8*, The International Journal of Human Rights,(Vol. 13, No. 1, February 2009), p.94

⁹⁹.Yash Pal Ghai and Jill Ghai, the MDGS through Socio-Economic Rights: Constitution Making and Implementation Handbook, United Nations Millennium Campaign, Bangkok, Thailand, 2009, P.11

¹⁰⁰.Supra Note 78,Fact Sheet,P.44

¹⁰¹.Declaration on the Rights of Disabled Persons, proclaimed by UN General Assembly Resolution 3447 (XXX) of 9 December 1975 in New York, Article 9. See also United Nations Declaration on the Rights of Indigenous Peoples,

it is provided with strong provision, i.e., 'shall' so as to implicate the crucial concern of the world community towards this group of people. But, it rather provides procedural protection.

B. General Comments/ Recommendations/ and Statements

General Comments are the comments or recommendations adopted by CESCR under ICESCR for the promotion and protection of the rights in the covenant.¹⁰² While General Comments and Statements¹⁰³ are not legally binding, they can have a persuasive effect, setting out interpretive positions around which state practice may unite.¹⁰⁴ *Ssenyonjo* argues that no state has ever raised any formal objections to the general comments or statements of the CESCR, which apparently suggesting wide acceptance by states of the Committee's interpretation of the Covenant through its General Comments and Statements. *Kenna* substantiates this argument in that the UNCESCR has used the General Comments as a means of developing a common understanding of the norms by establishing a prescriptive definition and spell out the elements of housing policy that States must address in the housing available to its citizens.¹⁰⁵ However, there is no uniform understanding about these documents which the paper appreciates the existing frictions as to the status of these documents,¹⁰⁶ but deliberately overruled as it is outside the scope of the paper.

Sepulveda, ...et al, strength the above contentions that the general comments or recommendations, and opinions may not be legally binding *per se*, but their impact on international human rights law (standards) is significant to provide authoritative guidance to states parties and have a significant influence on the behavior of the same.¹⁰⁷ *Ssenyonjo* argues that at the UN level, the CESCR which monitors the implementation of ESC rights under the

Resolution adopted by the General Assembly [without reference to a Main Committee (*A/61/L.67 and Add.1*)] 61/295, 13 September 2007, Article 21 (1) recognizes among other things the right to improved housing.

¹⁰². Nisuke Ando, *General Comments/Recommendations*, Max Planck Encyclopedia of Public International Law, Max Planck Institute for Comparative Public Law and International Law, Heidelberg and Oxford University Press, 2010, Para 1, (www.mpepil.com), last visited 15 September 2012

¹⁰³. Look at for instance, Statement Adopted by the Committee on Economic, Social, and Cultural Rights on 4 May 2001, UNDocE/C.12/2001/10, Para. 1, where it defined housing right as it has a direct and immediate bearing upon the eradication of poverty and strongly recommended the integration of international human rights norms into participatory, and multi-sectoral national poverty eradication plans

¹⁰⁴. Supra Note 83, Manisuli Ssenyonjo, p.972

¹⁰⁵. Padraic Kenna, "Housing Rights- the New Benchmarks for Housing Policy in Europe?", *The Urban Lawyer*, (Vol. 37, No. 1, winter 2005), p.97

¹⁰⁶. See generally, Conway Blake, *Normative Instruments in International Human Rights Law: Locating the General Comment*, Center for Human Rights and Global Justice Working Paper, NYU School of Law, New York, (Number 17, 2008), (www.chrgi.org), last visited 15 November 2012

¹⁰⁷. Supra Note 62, Magdalena Sepulveda, ... (et al), p.26

ICESCR has adopted a number of useful General Comments, which clarify the contents of specific rights; expand the scope of the rights; and the right holders.¹⁰⁸

Further, the Committee's general comments on the right to adequate housing and housing-related issues provide authoritative guidance on the Covenant's provisions, in particular its general comments No.1(duty of states to report);No. 3(the nature of states duties);No. 4(the right to adequate housing);No. 7(forced eviction in the context of housing right);No.9(on the domestic application of the Covenant);and No. 16(equality of men and women in the context of economic, social and cultural rights including housing).It has also clarified the contents, standards and obligations within housing rights which include the concepts of minimum core obligations, elements of adequate housing and progressive realization of the right in the context of the right to an adequate standard of living.¹⁰⁹ It follows therefore that the general comments of the CESCR has both conceptual and practical importance for the substantive definition, promotion, procedural protection and monitoring of housing rights.

The UN human rights treaty bodies adopt concluding observations one of which is CESCR, on the basis of state parties' reports, and final views that issued on the basis of individual communications. Even though the CESCR lacks the latter one, these findings, do serve to clarify the normative content of the requirements stipulated in the treaties; and create a better understanding of these requirements that would greatly facilitate an improved compliance, in the future, with those international obligations of the State and can provide relevant interpretive source for many national courts and for international tribunals.¹¹⁰ Accordingly, the Concluding Observations made by the CESCR on individual State reports are indicative of the extent to which states are fulfilling their obligations and provide valuable insights into how international ESCR¹¹¹ including housing right obligations should be implemented at the domestic level.

¹⁰⁸.Supra Note 104,Manisuli Ssenyonjo,P.971

¹⁰⁹.Thomas Hammarberg, "Social rights and the Implementation of Housing Rights," the Magazine of FEANTSA-the European Federation of National Organizations with the Homeless AISBL, autumn 2008), P.5

¹¹⁰.Laurie-Ann S. Jackson, *The International Covenant on Economic Social and Cultural Rights: A Critical Examination of the Relative Importance of Resource Constraints on Benchmarks and Benchmarking Processes in the African Context*, University of Cape Town, Faculty of Law Department of Public Law,(October 5, 2007), P.832.The author also argues that this procedure thus has the potential to be powerful as it engages the Committee and the State in a constructive, consultative manner, and is one in which expertise and innovative ideas and or solutions to problems can be exchanged

¹¹¹.The Budget Analysis and the Advancement of Economic and Social Rights in Northern Ireland Project (the 'QUB Budget Analysis Project'): *Budgeting for Economic and Social Rights: A Human Rights Framework* ,QUB School of Law, Belfast, (2010), P.11

The concluding observations the CESCR issued at different times depending on the state parties to ICESCR reports indicate that Positive aspects in which the committee appreciates the effort exerted; Principal subjects of concern and recommendations where the committee expresses its deep concern on states general non-compliance which in its turn is important for benchmarking and failure to implement specific rights and recommends what that state is expected to do which must be reflected in the future report of state party.¹¹² As the paper tries to grasp from concluding observations of the committee on fifty-five states parties, most of the common concerns of the committee focus on lack of social housing policy scheme; housing deficit; failure to allocate budget for housing; forced eviction; non-compliance with the preceding concluding observations; failure to incorporate data on the status of housing so and so forth.

3.2.3. Others

There are also several non-binding resolutions; recommendations; International Guidelines; International Principles; International Conference Papers; and Reports by the UN and its specialized agencies relating to housing as a human right. Alike soft laws, even though they are non-binding, they have conceptual and practical merits in providing important guidance for the elaboration of international law, promotion of the human rights in general and housing right in particular, to add contents to the rights and to influence the behavior of states. For the purpose of this thesis, the resolutions; recommendations; guidelines; principles; conference papers; and

¹¹²For instance, Concluding Observations of the Committee on Economic, Social and Cultural Rights, the Kingdom of the Netherlands, UNDoc.E/C.12/NDL/CO/4-5, 9 December 2010, Para.25 (b), where the committee recommends that the state meet its core obligations under the Covenant and ensure that the minimum essential level relating to the right to housing, ...is respected, protected and fulfilled in relation to undocumented migrants; See also that of Slovakia, UNDoc.E/C.12/SVK/CO/2, 8 June 2012, Para.22 where the committee was concerned by the fact that some groups within the State party's population, especially its most disadvantaged and most marginalized members, including the Roma, still do not have access to adequate housing. It is also concerned by reports of numerous forced evictions of Roma; Further See Spain, UNDoc. E/C.12/ESP/CO/5, 6 June 2012, Para.21; New Zealand, UNDocE/C.12/NZL/CO/3, 31 May 2012, Para.22; Cameroon, UNDocE/C.12/CMR/CO/2-3, 23 January 2012, Para.22; Israel, UNDocE/C.12/ISR/CO/3, 16 December 2011, Paras.25&26; Estonia, UNDocE/C.12/EST/CO/2, 16 December 2011, Para.22; Argentina, UNDocE/C.12/ARG/CO/3, 14 December 2011, Para.21; Germany, UNDoc E/C.12/DEU/CO/5, 12 July 2011, Para.27; Turkey, UNDocE/C.12/TUR/CO/1, 12 July 2011, Para.28; Sri Lanka, UNDoc E/C.12/LKA/CO/2-4, 9 December 2010, Para.31; Uruguay, E/C.12/URY/CO/3-4, 1 December 2010, Para.20; Dominican Republic, UNDocE/C.12/DOM/CO/3, 26 November 2010, Para.27; Switzerland, UNDocE/C.12/CHE/CO/2-3, 26 November 2010, Para.18; Hungary, UNDocE/C.12/HUN/CO/3, 16 January 2008, Para.45; Ethiopia, UNDocE/C.12/ETH/CO/1-3, 31 May 2012, Paras.20 & 21; Russian Federation, UNDocE/C.12/RUS/CO/5, 1 June 2011, Para.29; Kazakhstan, UNDocE/C.12/KAZ/CO/1, 7 June 2010, Para.29; Democratic Republic of the Congo, UNDoc E/C.12/COD/CO/4, 16 December 2009, Para.39; Republic of Korea, UNDoc E/C.12/KOR/CO/3, 17 December 2009, Para.28; Chad, UNDocE/C.12/TCD/CO/3, 16 December 2009, Paras.27&28; Madagascar, UNDocE/C.12/MDG/CO/2, 16 December 2009, Paras.26&27; Angola, UNDoc E/C.12/AGO/CO/3, 1 December 2008, Paras.30, 31 & 32; Cyprus, UNDoc E/C.12/CYP/CO/5, 12 June 2009, Para.21

reports are limited to pertinent UN organs and its agencies which have defined power pertaining to housing rights. Accordingly, the following documents are the samples of such instruments.

A. International Resolutions and Recommendations

Concerning the resolutions, with the exception of those adopted by the Security Council, such resolutions are not legally binding *per se*. Rather, they indicate the international community's understanding of international law, their political willingness to work towards the achievement of the respective resolution's contents, and since most United Nations resolutions are adopted by consensus, they tend to indicate universally accepted views of international standards, principles and norms,¹¹³ which tend to set common understanding of international community.

Leckie identified certain crucial soft law documents in chronological order those the UN system advanced on housing rights in 1990s which have given added weight to the primacy of housing rights. These include: in 1990 First 'General Discussion' on Housing Rights; 1990 First violation of housing rights declared; 1990 New housing rights reporting guidelines for States reports issued; 1991 First UN resolution on forced evictions; 1991 Appointment of Special Rapporteur on Housing Rights; 1991 General Comment No. 4 on Housing Rights adopted, are few to mention.¹¹⁴ Hence, these documents can influence both the acts of states including legislative and policy acts and their behavior.

The International Labor Organization Recommendations have also both conceptual and practical importance in addressing housing rights. For instance, the International Labor Organization Recommendation No. 115, *Principle 2* states that "it should be an objective of national housing policy to promote...to ensuring that adequate and decent housing ... are made available to all

¹¹³.Supra Note 63, UN Housing Rights Program Report No.1, See also United Nations General Assembly Resolution 42/146 on the "Realization of the Right to Adequate Housing," adopted 7 December 1987 ;Commission on Human Settlements Resolution 14/6: "The Human Right to Adequate Housing", adopted 5 May 1993 (UN-DOC A/48/8); Commission on Human Settlements Resolution 16/7, The Realization of the Human Right to Adequate Housing, adopted 7 May 1997(UN-DOC A/52/8);United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities Resolution 1994/8 on "Children and the Right to Adequate Housing" adopted 23 August 1994; United Nations Commission on Human Rights Resolution 1993/77 on "Forced Evictions," adopted on 10 March 1993; United Nations Commission on Human Settlements Resolution 14/6 on "The Human Right to Adequate Housing," adopted 5 May 1993, The United Nations Commission on Human Rights Resolution 2001/28, entitled "Adequate housing as a component of the right to an adequate standard of living."

¹¹⁴.Scott Leckie, Regional Housing Issues Profile, Implementing Housing Rights in South East Europe, United Nations Human Settlements Program (UN- HABITAT), Paper presented to the Regional Consultation on Making Cities Inclusive, Belgrade, 25-26 February 2002, p.19

workers and their families.”¹¹⁵ This has crucial importance as it capable of influencing national policies of states parties.

B. International Guidelines and Principles

The CESCR produced a revised and more extensive set of guidelines.¹¹⁶ These document requests specific questions¹¹⁷ that States could use as guidelines in assessing their progress towards the realization of *Articles 1 and 2* as well as *Articles 6-15* of the ICESCR that have the potential to serve as aid in the conceptualization and concretization of targets, goals and/or criteria for States as they create their national benchmarks.¹¹⁸ In addition, due to the growing delayed reporting or non reporting by States parties to human rights treaty bodies, as well as the difficult demands reporting to six or more committees imposes on States parties and so as to promote the integrated approach to the human rights obligations of State parties,¹¹⁹ it has been prepared the Harmonized Guidelines on Reporting under the International Human Rights Treaties, including Guidelines on a Common Core Document and treaty-specific targeted documents.¹²⁰ These documents have concrete merits in defining respective duties of states; providing policy; and legislative guidelines for states.

Furthermore, the *Maastricht Guidelines* expand state obligation provided in the ICESCR.¹²¹ For instance, *paragraph 9* of the same provides the minimum core obligations of sates in that “If significant numbers of people in a State are deprived of basic ..., shelter or ..., then that State is in clear violation of the minimum core obligation under the Covenant.”¹²² So, these guidelines may help states to set benchmarks to implement their housing obligations.

¹¹⁵.International Labor Organization Recommendation No. 115, on Worker's Housing, adopted at the forty-fifth session of the ILO Governing Body on 7 June 1961, *Principle 2*; See also ILO Recommendation No. 162 concerning Older Workers, was adopted by the General Conference of the International Labor Organization on 23 June 1980, Part II, *Article 5(g)*

¹¹⁶.Revised General Guidelines Regarding the Form and Contents of Reports to be submitted by States Parties under *Articles 16 and 17* of the ICESCR, UN Doc E/C.12/1991/1, 17 June 1991,

¹¹⁷.Ibid, Revised General Guidelines, look at the specific questions on the status of housing under Para. 3(a-e)

¹¹⁸.Supra Note 110, Laurie-Ann S. Jackson, p.52

¹¹⁹.Olivier De Schutter, *International Human Rights Law: Cases, Materials, Commentary*, Cambridge University Press, (2010,) (www.cambridge.org,) last visited October 14, 2011, p.850

¹²⁰.Harmonized Guidelines on Reporting under the International Human Rights Treaties, including Guidelines on a Common Core Document and treaty-specific targeted documents (HRI/MC/2005/3, 1 June 2005)

¹²¹.Supra Note 118, Laurie-Ann S. Jackson, p.42

¹²².Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, (1986), *Para 9*. See also Comprehensive Human Rights Guidelines on Development-Based Displacement, Adopted by the Expert Seminar on the Practice of Forced Evictions, Geneva, Switzerland, 11-13 June 1997, Section Four, *Article 20* provides: “All persons have the right to adequate housing ...”

A further point is that several international principles set out specific provisions pertaining to the right to adequate housing. Even though they are not legally binding, they provide useful guidance regarding the implementation of the right to adequate housing.¹²³ For instance, the Limburg Principles on the Implementation of the ICESCR set out views on the interpretation of key provisions of the Covenant and provide a comprehensive framework for understanding the legal nature of the norms found in the Covenant and are widely used as a means of interpreting those norms.¹²⁴ In addition, the Paris Principles on National Human Rights Institutions have both conceptual and practical importance to add added values on the human right to adequate housing. For instance, *Para 3(a) (i)* entitles the National Human Rights Institutions(hereinafter NHRI) among other things... it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures.¹²⁵ So, while doing such activities the national human rights institutions can influence the government organs concerned to incorporate international norms of universal values that define, promote, protect and regulate housing right in the national context.

C. International Conference Papers and Reports

The world conference process brings together the entire international community – government representatives, NGOs, Community Based Organizations (herein after CBOs), individuals and provides an opportunity to reach consensus on shared values and goals and strategies to achieve them.¹²⁶ According to this global report, like UN's resolutions, documents which emerge from world conference are not legally binding on States *per se*, but they carry political and moral persuasion because they emerge from a political process and have been agreed to by a majority of States. For instance, the first United Nations Conference on Human Settlements was held at

¹²³.UN HABITAT and OHCHR, Indigenous Peoples' Right to Adequate Housing: A Global Overview, United Nation Housing Rights Report No.7, 2005)(<http://www.unhabitat.org/>),Last visited July 13, 2011, p.162

¹²⁴.Office of the United Nations High Commissioner for Human Rights, Economic, Social and Cultural Rights Handbook for National Human Rights Institutions, Professional Training Series No.12 United Nations, New York and Geneva, 2005, P.8.According to this document since they preceded General Comment No. 3 of 1990 of the CESCR and were very influential when the Committee came to prepare that general comment. See also, 'Pinheiro Principles' on Housing and Property Restitution for Refugees and Displaced Persons, UN Sub-Commission on the Promotion and Protection of Human Rights, UN Doc. E/CN.4/Sub.2/2005/17, (June 28, 2005) (<http://www.badil.org/e-library/Pinheiro-Principles.pdf>), Prepared by the UN's Special Rapporteur on Housing and Property Restitution, Paulo Sergio Pinheiro of Brazil, the 'Pinheiro Principles', principle 2

¹²⁵.Paris Principles, National Institutions for the Promotion and Protection of Human Rights, UN Doc.A/RES/48/134,adopted by GA at 85th Plenary Meeting 20 December 1993, *Para 3(a) (i)*,See also Basic Principles and Guidelines on Development-based Evictions and Displacement, UNDocA/HRC/4/18

¹²⁶.Supra Note 123,UN HABITAT and OHCHR, P.163

Vancouver, Canada, in 1976; at the second United Nations Conference on Human Settlements (Habitat II: Istanbul, Turkey, 3-14 June 1996), Heads of State or Government endorsed the universal goals of ensuring adequate shelter for all and making human settlements safer, healthier and more livable, and adopted the Habitat Agenda (Global Plan of Action).¹²⁷ Thus, these conference outputs enable states to adopt those action plans to their national context.

Other relevant sources include either mission or annual reports of the UN Special Procedures with specific ESR-related mandates. For instance, the official reports of the Special Rapporteur on the Right to Adequate Housing as a Component of the Right to an Adequate Standard of Living play important roles in adding some added values on the contents of the right.¹²⁸ There are numerous reports of the Special Rapporteur on the right to adequate housing either in self initiative or by invitation of the state concerned.¹²⁹ The report reflects either positive or negative aspects of the states' compliance with the housing right obligations. For instance, in her mission to Algeria, *Rolnik* welcomes the progress made by the State in implementing the right to adequate housing and notes in particular the construction of a large housing stock for low income households.¹³⁰ In general, the universal normative framework is comprehensive and at the same time shows continuous endeavor to add certain added values on the right. Therefore, these hard; soft laws and others like resolutions, recommendations, guidelines, principles, conference papers and reports adds to the contents, enable the states parties to promote, protect, fulfill the housing

¹²⁷.Janusz Symonides and Vladimir Volodin(eds),A Guide to Human Rights Institutions, Standards and Procedures, United Nations Educational, Scientific and Cultural Organization, France, Paris,(2001),p.354

¹²⁸.Supra Note 111,The Budget Analysis, p.12. See also Habitat Agenda, Agenda 21(1992), *paragraph 61* that provides a strong statement of global support for the implementation of housing rights, with governments recognizing that they all have a "responsibility in the shelter sector" and that they "should take appropriate action in order to promote, protect and ensure the full and progressive realization of the right to adequate housing." The United Nations Human Settlements Program, UN-HABITAT, is the United Nations Agency for human settlements. It is mandated by the UN General Assembly to promote socially and environmentally sustainable human settlements development and adequate shelter for all, and helps the urban poor by transforming cities into safer, healthier, greener places with better opportunities and where everyone can live in dignity.

¹²⁹.For instance, at the invitation of the Government, the Special Rapporteur conducted a mission to Canada from 9 to 22 October 2007. The visit focused on four areas: homelessness; women and their right to adequate housing; Aboriginal populations; adequate housing and the possible impact of the 2010 Olympic Games on the right to adequate housing in Vancouver, look at his mission report- Human Rights Council Tenth session, Agenda item 3, A/HRC/10/7/Add.3 ,17 February 2009.He has also carried out many missions and visits to countries such as Romania, Mexico, Afghanistan, Kenya, Brazil, Iran, Cambodia, Australia, Spain and South Africa. Look at also mission report to Peru, E/CN.4/2004/48/Add.1,11 February 2004

¹³⁰.Raquel Rolnik, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Mission to Algeria, UNDoc A/HRC/19/53/Add.2,26 December 201, Summary part. See also Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, Social and Human Rights Questions, UNDoc. E/2003/100,Paras.37-40

rights and influence the housing policies and legislative acts of the same in one hand and implicates the maximum endeavor international community to address the right, on the other.

3.3. State Duties on the Human Right to Adequate Housing under the Universal System

Various frameworks have been used to describe the State's obligations under ICESCR which are often analyzed in terms of the tripartite approach under which state's duties are categorized in terms of three layers: duty to respect, protect and fulfill otherwise called topologies of state duties.¹³¹ State duties provided under ICESCR are different in nature. Some are general and some designed to progressively be achieved; whereas some impose immediate obligations. Therefore, for the sake of clarity state duties are classified into topologies of States duties; generic States duties; immediate duties of States; and duties fall under progressive realization.

3.3.1. Topologies of States Duties

These are the general duties states owe to the housing rights holders. The most important and widely accepted of these typologies is the *Maastricht Guidelines*, which describe State parties' duties under ICESCR into duty to respect, protect and fulfill human rights which are equally important to all rights the failure of which amounts to violation of ESCR including housing rights.¹³² *Hammarberg* identified three types of duties assumed by states in relation to housing rights. First, some are obligations to refrain from interfering with liberties, opportunities or possessions. Second, others are obligations to secure rights against invasion by other individuals or groups. Third, states may have positive obligations to take appropriate legislative, budgetary and other measures in order to achieve appropriate housing outcomes.¹³³ According to this author, these three types of duties are sometimes referred to as duties to respect, protect and fulfill respectively. In the same token, *Leckie* identified state duties by synthesizing all international documents which can be divided into 34 discernable State duties.¹³⁴ These duties are important for states' policy direction.

¹³¹.Supra Note 128,the Budget Analysis ,p.13

¹³².Supra Note 122,the Maastricht Guidelines. For instance, the right to housing is violated if the State engages in arbitrary forced evictions within the meaning of duty to respect. The obligation to protect requires States to prevent violations of such rights by third parties. The obligation to fulfill requires States to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights.

¹³³.Supra Note 109,Thomas Hammarberg,, P.6

¹³⁴.Scott Leckie, *The Right to Adequate Housing: A Synthesis of State Obligations*, Centre on Housing Rights and Evictions (which was registered as a not-for-profit organization in Australia, Brazil, Cambodia, Ghana, The

3.3.2. Generic States Duties

Each of the three layers of state duties has two dimensions what usually called generic duties: duties of conduct and result. The former duty dictates that a government is obliged to design and implement its policies and programs in a way that can reasonably be expected to realize the enjoyment of rights and the latter requires a government to achieve outcomes that enhance the enjoyment of rights.¹³⁵ These dimensions of state duties have also jurisprudential backing where Maastricht Guidelines under its *paragraph 7* provide that the obligations to respect, protect and fulfill each contain elements of obligation of conduct and obligation of result. For instance, in the case of housing right, the obligation of conduct could involve the adoption and implementation of a plan of action to reduce homelessness and the latter requires States to achieve specific targets to satisfy a detailed substantive standard.¹³⁶ These state duties hold true for socio-economic rights including housing.

3.3.3. Immediate Duties of States

These are duties which a State party is immediately required to satisfy once it has ratified the ICESCR.¹³⁷ These types of duties dictate states parties to implement the principle of non-discrimination and equality; observe minimum Core obligations; set process requirements; monitor the housing situation; and the duty to take steps. Putting otherwise such duties are not subject to progressive realization which in its turn partly depends on the available resource.

Netherlands, Sri Lanka, Switzerland and the USA.) ,Geneva, Switzerland, (1994) (<http://www.cohre.org/>) last visited July 14 ,2011,p.180,(Scott Leckie is the Executive Director of the Centre on Housing Rights and Evictions (COHRE). He has also worked for a variety of UN agencies including UNHCR, OHCHR, UNDP and UNCHS.)To mention some of the samples, the duty to *respect* include: the right to popular participation throughout the housing sphere, including any housing laws or policies; legal protection from forced or threatened eviction or house demolitions;Second, the duty to *protect* housing rights include: immediate steps must be taken by States to ensure that violations of housing rights standards by the State and its agents are, to the maximum extent, prevented from occurring; ...Third, the duty to promote housing rights include: comprehensive legislative and policy review of all laws, regulations or other directives having any negatively bearing on the fulfillment of housing rights should be undertaken without delay; priority attention and targeted strategies towards satisfying the housing needs of disadvantaged groups;... Fourth, the duty to fulfill housing rights include: housing subsidies for tenants and first-time home buyers... forms a fundamental requirement of the obligation to fulfill.

¹³⁵.Supra Note 21,Radhika Balakrishnan, et al, p.20

¹³⁶.Supra Note 132,the Maastricht Guidelines Part II, *Article 7*

¹³⁷.International Commission of Jurists, *Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative Experiences of Justiciability*, Geneva,(2008),(www.icj.org),last visited 15 November 2012,p.26

A. Duty to Avoid Discrimination in the Housing Field

Discrimination in the context of housing right can take the form of discriminatory laws, policies or measures; zoning regulations; exclusionary policy development; exclusion from housing benefits; denial of security of tenure; lack of access to credit; limited participation in decision-making; or lack of protection against discriminatory practices carried out by private actors.¹³⁸ According to this document States have an obligation to prohibit and eliminate discrimination on all grounds and ensure *de jure* and *de facto* equality in access to adequate housing and protection against forced eviction. This can be inferred from *Article 2 (2)* of the ICESCR which is an open-ended non-discrimination clause that can be linked to *Article 11* of the same to prohibit discrimination in the right to adequate housing which has been reinforced by Limburg Principles.¹³⁹

Discrimination can encompass both direct and indirect discrimination. Direct discrimination occurs where a person is subject to less favorable treatment than others explicitly on the basis of a particular characteristic such as race or gender; whereas, indirect discrimination occurs where an ostensibly neutral criterion is applied to make decisions or take action but has a disproportionate impact on persons who share a particular characteristic.¹⁴⁰ The CESCR through its jurisprudence addressed that the right to non-discrimination is not subject to progressive realization.¹⁴¹ The committee also addressed the nature of discrimination in that the right to non-discrimination and equality covers both formal and substantive equality.¹⁴² According to the committee, formal equality requires States to ensure that laws and policies do not discriminate on prohibited grounds and Substantive equality requires States to address *de facto* discrimination.

¹³⁸.Supra Note 100,Fact Sheet 21, P.10

¹³⁹.Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986), *Paras.35-41*

¹⁴⁰.Supra Note 69,Gil Gan-Mor, ,p.9

¹⁴¹.Committee on Economic, Social and Cultural Rights, *General Comment No. 3, the Nature of States Parties Obligations, Article 2, par.1*, U.N.Doc. E/1991/23 (1990), *Paragraph 1*.

¹⁴².UN Committee on Economic, Social, and Cultural Rights, *General Comment No.20-Non-Discrimination in Economic, Social and Cultural Rights, Article 2(2) of ICESCR*, U.N.Doc. E/C.12/GC/20 (2009), *paragraph 8(a and b)*.

B. Duty to Fulfill Minimum Core Obligations

The concept of the “minimum core” seeks to establish a minimum legal content for the notoriously indeterminate claims of economic and social rights.¹⁴³ Young argues that with the minimum core concept as its guide, economic and social rights are supposed to enter the hard work of hard law. In addition, interpretations of the Covenant by the jurisprudence of the CESCR stress that all States, notwithstanding their level of economic development, possess a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights found in the ICESCR.¹⁴⁴ According to the CESCR, a State in which any significant number of individuals is deprived of basic shelter and housing is *prima facie* failing to perform its obligations under the Covenant. The Maastricht Guidelines provides such duties in an absolute way in that “such minimum core obligations apply irrespective of the availability of resources of the country concerned or any other factors and difficulties.”¹⁴⁵ What is more, the Maastricht *Guidelines 9* cumulative with *10* are fundamental for they establish that notwithstanding the relative wealth of a given country, minimum core obligations are incumbent on all States to secure minimum essential levels of each right found in the ICESCR under all circumstances, including periods characterized by resource scarcity.¹⁴⁶ So, resource constraint cannot be a defense for states parties.

Furthermore, the general comment No 3 of the CESCR stresses that the concept of “minimum core obligations” arose out of the extensive experience gained by the Committee in reviewing State parties reports.¹⁴⁷ Kenna argues that general comment No. 4. on the Right to Adequate Housing sets out the minimum core guarantees which, under public international law, are legally vested in all persons¹⁴⁸ which include: legal security of tenure; availability of services, materials and infrastructure; affordable housing; habitable housing; accessible housing; housing in a

¹⁴³ Katharine G. Young, “the Minimum Core of Economic and Social Rights:” A Concept in Search of Content, the Yale Journal of International Law, (Vol. 33: 113 2008) , P.114. Generally, see Mesenbet Assefa Tadege, “Defining the Minimum Core Obligations-Conundrums in International Human Rights Law and Lessons from the Constitutional Court of South Africa,” (Article Published in Mekelle University Law Journal Vol. 1 No. 1, August 2010), (June 5, 2009)

¹⁴⁴ Supra Note 75, CESCR, General Comment No.4, paragraph 10.

¹⁴⁵ Supra Note 136, Maastricht Guidelines , Part II, Guideline 9

¹⁴⁶ Victor Dankwa...(et al), Commentary on the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Naam auteur/artikel. SIM Special 20, p.23

¹⁴⁷ Supra Note 141, CESCR, General Comment No.3, Para 10, See also Maastricht Guidelines, Guideline 9

¹⁴⁸ Supra Note 82, Padraic Kenna, International Instruments on Housing Rights, p.2

suitable location; and housing constructed and culturally adequate.¹⁴⁹ But, the paper is not quite sure whether these things are universal housing standards or minimum core obligations for the states parties.

C. Duty to Set Process Requirements

Process requirements by definition is meant to develop strategy to realize the right to adequate housing and identify the resources available and ensure genuine consultation and participation of those likely to be affected by housing poverty.¹⁵⁰ According to *Porter*, a cornerstone of minimal compliance with the right to adequate housing under international human rights law is the adoption of a comprehensive and reasonable strategy to eliminate homelessness and implement the right to adequate housing with clear goals and timetables.¹⁵¹

This part of state duty has also jurisprudential backing of the CESCR that invariably require the adoption of a national housing strategy which should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives.¹⁵² It has been also emphasized by CESCR in General Comment No.3 that to devise strategies and programs for the promotion of ESCR, are not in any way eliminated as a result of resource constraints.¹⁵³ So the adoption of a national housing strategy plays a dual role in that it provides substantive definition and procedural protection of housing rights that cannot be subject to progressive realization.

D. Duty to Set Monitoring Mechanisms

In many instances, immediate obligations in relation to particular rights are identified by the CESCR as one of the obligations of conduct. For instance, in the context of the right to adequate housing, the duty to monitor the housing situation is of immediate effect.¹⁵⁴ As to its scope, monitoring takes place at national, regional and international levels, and involves different actors, such as the State itself, civil society, National Human Rights Institutions and international

¹⁴⁹.Supra Note 144,CESCR,General Comment No.4, *paragraph 8(a-g)*

¹⁵⁰.Supra Note 113,United Nations Housing Rights Program Report No. 1, P.22

¹⁵¹.Bruce Porter, Recommendations for Amendments to Bill 140 of Canada :Strong Communities Through Affordable Housing Act -Notes to Presentation to the Standing Committee on Justice Policy, Social Rights Advocacy Centre (SRAC), (March 24, 2011), P.2

¹⁵².Supra Note 149,CESCR, *General Comment No. 4, paragraph 12*

¹⁵³.Supra Note 147,CESCR, *General Comment 3,Paragraph 11*

¹⁵⁴.Supra Note 152, CESCR, *General Comment No. 4, paragraph 13.*

human rights mechanisms.¹⁵⁵ According to this document, monitoring housing right may entail administrative, policy and political mechanisms. The CESCR has also indicated that monitoring the implementation and progressive realization of ESC rights including housing is an obligation of immediate effect.¹⁵⁶ The detail shall be discussed as one of the aspects of the human right to adequate housing under section 3.6, item 'monitoring the implementation of housing right'.

E. Duty to Take Steps

Pursuant to *Article 2(1)* of the ICESCR, each state party is obligated to take steps, by all appropriate means' including legislative and non-legislative or legislative, administrative, judicial, economic, social and educational measures.¹⁵⁷ Despite the fact that, 'duty to take steps' is an umbrella concept for all activities of states, it has been endorsed by jurisprudence of the CESCR as it should fall under immediate duties of states. Accordingly, the CESCR worries that the undertaking in *Article 2(1)* "to take steps", is not qualified or limited by other considerations.¹⁵⁸ According to the committee, while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short period of time after the Covenant's entry into force for the States concerned which should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant. The committee also indicated that the means which should be used in order to satisfy the obligation to take steps are stated in *Article 2 (1)* to be "all appropriate means, including particularly the adoption of legislative measures".¹⁵⁹ This approach also substantiated by the committee in other general comment that measures designed to satisfy a State party's obligations in respect of the right to adequate housing may reflect whatever mix of public and private sector that should be in the shortest possible time in accordance with the

¹⁵⁵.Supra Note 138, *Fact Sheet No. 21/Rev.1*,P.38. Administrative and political mechanisms are complementary or a parallel means to judicial mechanisms of accountability. For instance, the development of a national housing policy or strategy, linked to work plans and participatory budgets, plays an important role in ensuring government accountability. Furthermore, assessments of various kinds, such as human rights impact assessments, offer a way for policy makers to anticipate the likely impact of a projected policy and later to review its actual impact on the enjoyment of the right to adequate housing. Political mechanisms include democratic processes, monitoring and advocacy by independent actors.

¹⁵⁶.Supra note 153,CESCR, *General Comment 3, Paragraph 11*

¹⁵⁷.M. Rodwan Abouharb and David L. Cingranelli, *International Regimes and Human Rights*, (Sunday, April 17, 2011), p.5

¹⁵⁸.Supra Note 156,CESCR, *General Comment No.3*,Para 2

¹⁵⁹.Id, *General Comment No.3*,Para.3

maximum of available resources.¹⁶⁰ It follows therefore that the government is expected to set enabling strategies which creates conducive environment for both government and private sectors to fulfill housing rights.

Unlike in the Covenant, it is made clear in the *Limburg Principles* that national action and involvement is immediately required for the full realization of the Covenant as part of the state duty “to take steps”.¹⁶¹ The means necessary to take steps are clearly stipulated by the same document from *paragraphs 17 through 19* that State parties shall take at the national level which includes legislative, administrative, judicial, economic, social and educational measures in order to fulfill obligations under the Covenant. *Jackson* appreciates the importance of taking steps as it begins to articulate and emphasize the active role of the State in benchmarking processes towards the full realization of ESCRs.¹⁶² Benchmarks are goals or targets set according to the differing situations of each country and are sometimes referred to as “minimum thresholds.”¹⁶³ *Young* argues that in an important respect, benchmarks do not rank rights.¹⁶⁴ Once the benchmark is set the government can go ahead with clear goals and targets within certain time framework. So, to take step does not subject to the standard of progressive realization.

3.3.4. Duties that Fall under Progressive Realization

As one of the obligations of result, the ‘progressive realization’ means that States are obliged to continuously strive to strengthen economic, social and cultural rights, including the right to adequate housing.¹⁶⁵ Progressive realization also means that State has a duty to examine legal, administrative, operational and financial barriers to accessing socio-economic rights including housing and, where possible, to take steps to lower them over time.¹⁶⁶ For instance, according to this author, housing must be made accessible to both a larger number and also a wider range of people as time progresses.

¹⁶⁰.Supra Note 154,CESCR, ‘General Comment No. 4, paragraph 14

¹⁶¹.Supra Note 139,Limburg Principles, *Paragraph 16* of subsection B

¹⁶².Supra Note 121,Laurie-Ann S. Jackson, P.35

¹⁶³.Maria Green, What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement(2001),in Katharine G. Young, “the Minimum Core of Economic and Social Rights:” A Concept in Search of Content, *the Yale Journal of International Law* ,(Vol. 33: 113 2008), p.167

¹⁶⁴.Supra Note 143,Katharine G. Young, p.167

¹⁶⁵.Supra Note 150,United Nations Housing Rights Program Report No.IP.10

¹⁶⁶. Shivani Verma, Justiciability of Economic, Social and Cultural Rights Relevant Case Law, International Council on Human Rights Policy, Review Meeting, Rights and Responsibilities of Human Rights Organizations, Geneva (15 March 2005),p.44

In order to mainstream legal interpretations of the ICESCR the *Limburg Principles* on the implementation of the same was devised that strengthen the concept of “progressive realization” by adding that State parties are obliged to move expeditiously towards the realization of ESCRs and that they, under no circumstances, are to interpret this obligation as a right to indefinitely defer the realization of the rights outlined in the Covenant.¹⁶⁷ What is more, general comment No. 3 of the CESCR makes a similar assertion that the phrase of the ‘progressive realization’ must be read in the light of the overall objective- the *raison d’être* of the Covenant which is to establish clear obligations of State parties in respect of the full realization of the rights in question.”¹⁶⁸ That is to mean socio-economic rights in general and housing rights in particular cannot be implemented within a short period of time except for those minimum core guarantees. These duties include:

A. Duty not to take Retrogressive Measures

This aspect of the concern of housing right as such has no literature background; rather the CESCR has well developed jurisprudence through its general comments. Accordingly, the duty of ‘progressive realization’ means a duty not to take retrogressive measures that includes the provision of housing subsidies and ensuring that levels of housing finance adequately reflect housing needs.¹⁶⁹ The CESCR has not defined what is meant by ‘deliberate retrogressive measure’ but reference can be made to certain guidelines in general comment number 4 that provides ‘a general decline of living and housing conditions, directly attributable to policy and legislative decisions by State Parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.’¹⁷⁰

Verma reinforces this jurisprudential value in that deliberately retrogressive measures for example in the housing context can be abolishing the housing subsidy scheme without putting in place a suitable alternative program to facilitate access to housing by the poor.¹⁷¹ So, acts of retrogressive nature like avoiding housing subsidy or ceasing the construction of social housing amounts violation of these duties. As discussed in the literature review, this latter duty of states

¹⁶⁷.Supra Note 26,Shareen Hertel and Lanse Minkler, P.29,these authors made reference to the Limburg Principles Part I (B), paragraphs 21—24

¹⁶⁸.Supra Note 159,CESCR, *General Comment 3, Paragraph 9*

¹⁶⁹.Id, CESCR, *General Comment No. 3, Paragraph 8(c)*.

¹⁷⁰.Supra Note 160, CESCR, *General Comment No. 4, paragraph 11*.

¹⁷¹. Supra Note, Shivani Verma, P.45

subsist even though a certain state faces economic crisis since providing social housing fall under minimum core obligations of housing rights.

B. Duty to use the Maximum Available Resources

Article 2(1) requires States parties to progressively move forwards in the realization of the full right to adequate housing for everyone using the maximum of its available resources. The problem is that what is meant by 'maximum available resources'. Maximum available resources means identify and make use of all resources that can be used for the realization of the right to adequate housing.¹⁷² As it can be inferred from *Articles 2 (1), 11 and 23* of the ICESCR available resources refer to those existing within a State as well as those available from the international community through international cooperation and assistance. This is clearly stipulated in *Limburg Principles* that "available resources" refers to both the resources within a State and those available from the international community through international cooperation and assistance.¹⁷³

Even though the duty to allocate the maximum of available resources leaves the State a margin of discretion, a state does not have absolute discretion in the allocation of funding and the speed and progress of realization. For instance, failure to curb corruption and duty to ensure that funds earmarked for ESR may not be diverted for other purposes such as national defence, national prestige or even personal benefit of rulers.¹⁷⁴ According to *Blyberg*, it follows therefore that the principles which are enshrined in *Articles 55 and 56* of the UN Charter, *Articles 2(1), 11, 15, 22 and 23* of ICESCR, and latter jurisprudential developments like General Comment No.3, *Para. 13*, General Comment No.4, *para.19*, the *Limburg Principles* on the Implementation of the ICESCR (1986), *Paragraphs 29-34*, Revised General Guidelines regarding the form and contents of reports to be submitted by States Parties under *Articles 16 and 17* of the ICESCR which requests states at each provision to indicate whether international assistance is required, all impose duties on states parties to seek or provide international assistance and cooperation in their interaction with international community like reports. Thus, the maximum available resources

¹⁷².Supra Note 131, Budget Analysis ,P.9

¹⁷³.Supra Note, Limburg Principles, Part I, Section B Paragraph 26

¹⁷⁴.A. Blyberg, Notes from an International Budget Project Roundtable Discussion on the Obligation to use "Maximum of Available Resources, International Human Rights Internship Program (2008), in the Budget Analysis and the Advancement of Economic and Social Rights in Northern Ireland Project (the 'QUB Budget Analysis Project'): Budgeting for Economic and Social Rights: A Human Rights Framework (2010) QUB School of Law, Belfast,P.26

include both resources in state party; in other states parties and from international community in the form of assistance.

C. Duty to Set Method of Self Evaluation

The Office of the United Nations High Commissioner for Human Rights (herein after OHCHR) adopted a framework which usually known as set of indicators that help an assessment of steps taken by a State in addressing its obligations—from its acceptance of international human rights standards (structural indicators) to its efforts to meet the obligations that flow from the standards (process indicators), and on to the results of those efforts from the perspective of the affected population (outcome indicators).¹⁷⁵ This document identified instances of indicators for the right to adequate housing are the date of the inclusion of the right to adequate housing in the constitution (structural indicator); the share of public expenditure on social or community housing (process indicator); the proportion of the urban population living in slums and/or the reported cases of forced evictions (outcome indicator).

Schutter substantiates this definition in that indicators can be quantitative or qualitative.¹⁷⁶ According to this author, the first category views indicators narrowly as an equivalent of ‘statistics’ that can be expressed in quantitative form, such as numbers, percentages or indices and the latter, a broader ‘topical’ usage, covering any information relevant to the observance or enjoyment of a specific right. This notion has also been reinforced by the CESCR that qualitative, as well as quantitative data are required in order for an adequate assessment of the situation to be made.¹⁷⁷

On the other hand, benchmarking as used in human rights discourse refers to target and/ or goal setting which serve as a method of self evaluation for the State.¹⁷⁸ The CESCR through its jurisprudence also addressed the necessity to identify specific benchmarks or goals against which their performance in a given area can be assessed that can be global or national that provides an extremely valuable indication of progress.¹⁷⁹ As mentioned in the preceding section, benchmarks are goals or targets set according to the differing situations of each country and are sometimes

¹⁷⁵.Supra Note 155, Fact Sheet ,p.7

¹⁷⁶.Supra Note 119,Olivier De Schutter, P.484

¹⁷⁷.UN Committee on Economic, Social and Cultural Rights, *General Comment No.1*, Reporting by States Parties, UN.Doc.E/1989/22, (1989), Para 7

¹⁷⁸.Supra Note 162Laurie-Ann S. Jackson, p.21

¹⁷⁹.Supra Note 177,CESCR, *General Comment No.1*, Para 6

referred to as “minimum thresholds.”¹⁸⁰ *Young* argues that in an important respect, benchmarks do not rank rights.¹⁸¹ Hence, housing indicators and benchmarks are important methods of self evaluations for states compliance in the realization of the same.

3.4. Violation of the Human Right to Adequate Housing under the Universal System

Although the international community has consistently proclaimed that all human rights are indivisible, interrelated and interdependent, responses to violations to economic, social and cultural rights including housing both procedural and substantive are lower compared to the level of seriousness accorded to infringements of civil and political rights.¹⁸² This line of argument is substantiated by *Leckie* in that far greater seriousness has been accorded to violations of civil and political rights than economic, social and cultural rights.¹⁸³ But, *Leckie* argues that the situation is changing with the development of certain jurisprudences like the *Maastricht Guidelines* on Violations of Economic, Social and Cultural Rights which provide a great deal of clarity as to which 'acts of commission' and 'acts of omission'¹⁸⁴ would constitute violations of the rights in ICESCR, including housing rights.

In addition, the CESCR issued through its jurisprudential mandate two general comments so as to alleviate both conceptual and practical problems of housing rights violations. For instance, the committee considers that instances of forced eviction are *prima facie* incompatible with the requirements of the ICESCR and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.¹⁸⁵ But, it is not clear what these international principles are. The committee also concerned that forced evictions occur in both peacetime and in the context of armed conflict.¹⁸⁶ The UN Commission on Human Rights in 1993 concluded that “forced evictions are a gross violation of human rights, in particular the

¹⁸⁰ Supra Note 163, Maria Green, p.167

¹⁸¹ Supra Note 164, Katharine G. Young, p.167

¹⁸² Rakeb Messele, Enforcement of Human Rights in Ethiopia, Research Subcontracted by Action Professionals' Association for the People (APAP), (31 August 2002), P.28

¹⁸³ Supra Note 114, Scott Leckie, *Regional Housing Issues Profile*, p.20

¹⁸⁴ Supra Note 145, Maastricht Guidelines, Guidelines 14(a-g) are acts of commission and 15(a-j) are acts of omission.

¹⁸⁵ Supra Note 170, CESCR, *General Comment No. 4, paragraph, 18.*

¹⁸⁶ Committee on Economic, Social, and Cultural Rights, *General Comment No.7, the Right to Adequate Housing*, (Article 11(1)-Forced Eviction, UNDoc.E/1998/22, paras. 5-6

right to adequate housing.”¹⁸⁷ According to the findings of NGO report, the data available on forced evictions and contained in the Violation Database (herein after VDB) indicate that more than 78 million people remained evicted and forcibly displaced globally as of 6 October 2008.¹⁸⁸

Furthermore, the sharp price hikes and instability in rental prices and failure to control is internationally considered a factor in the increase of homeless people and the demolitions of a home constitute a severe violation of the right to housing.¹⁸⁹ The acts of privatization and liberalization processes, which have generated so much wealth for the already privileged in society, sometimes also result in low-income people facing significant reductions in the availability of low-cost housing which may result in the large numbers of people are being evicted for non-payment of rent and are falling into homelessness which leads to violation.¹⁹⁰

Nowak substantiates this argument in that, homelessness is the extreme form of denial of the right to housing and is constitutive of poverty.¹⁹¹ For instance, the case of *Mellacher and others v. Austria* dealt with the application of *Article 1* of Protocol 1 to the European Convention on the ‘peaceful enjoyment of possessions’ in the context of rent control measures. The applicant landlord argued that his rights under Protocol 1 were infringed due to the imposition of rent control measures on property he owned. However, the European Human Rights Court viewed the matter differently and held that “the measures adopted to control rents did not fall outside the state’s margin of appreciation, and although the rent reductions were striking in their amount they did not constitute a disproportionate burden.”¹⁹² So, the emerging jurisprudences, the report of UN agencies and NGOs together with scholarly literatures and research outputs played crucial roles towards addressing the violations of the human right to adequate housing under the Universal human rights system.

¹⁸⁷.UN Commission on Human Rights, Forced Eviction, UNDocE/CN.4/RES/1993/77, Adopted at 67th meeting, 10 March 1993, *Para 1*,

¹⁸⁸.Habitat International Coalition (HIC), and Housing and Land Rights Network (HLRN), Housing and Land Rights Crisis! Violations Escalating around the World, (2008), p.7

¹⁸⁹.Supra Note 140,Gil Gan-Mor, p.10

¹⁹⁰.Supra Note 70,James R. Lewis,& Carl Skutsch, P.746

¹⁹¹.Manfred Nowak, Human Rights: A Handbook for parliamentarians, UN High Commissioner for Human Rights and Inter-Parliamentary Union,No.8(2005),(www.ohchr.org) and (www.ipu.org), last visited April 23, 2012,P.140

¹⁹².Mellacher and others v. Austria, European Court Human Rights, Series A, No. 169(Judgment of 19 December 1989), in Magdalena Sepulveda... (et al), Human Rights Reference Handbook, University for Peace, Ciudad Colon, Costa Rica,(3rd red,2004), (www.upeace.org),, last visited July 14,2011, p.87

3.5. Remedies for the Violations of the Human Right to Adequate Housing under the Universal System

This component necessary to understanding human rights in general and housing rights in particular materializes where a violation of its normative content or a violation against a state duty takes place. Questions relating to the domestic application of international human rights standards must be considered in line with two principles of international law.¹⁹³ According to *Rakeb*, the first is reflected in *Article 27* of the Vienna Convention on the Law of Treaties that states “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty” and the second one is in *Article 8* of the UDHR which states “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”.

But, the second international principle pertaining to the right to a remedy for victims of violations of international human rights and humanitarian law are contained in numerous international instruments other than the one indicated above. For instance, *Article 2(3) (a-c)* of the ICCPR¹⁹⁴ ; *Article 6* of the International Convention on the Elimination of All Forms of Racial Discrimination provides two mechanisms of safeguarding human rights, effective protection and effective remedy¹⁹⁵ and *Article 14(1 and 2)* of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides redress and reparation as aspects of remedy.¹⁹⁶ Unlike these international human rights instruments, the ICESCR does not provide remedies for the violations of human rights therein including housing.

However, all the above human rights documents do not provide international remedies. It is undeniable that international remedies are complementary to national ones. That is to mean the primary arena for the enforcement of human rights remains that of domestic law. That is why in most international procedures the exhaustion of local remedy becomes a prerequisite to initiate international proceedings. To fill the gap of provision of remedies in the ICESCR, the *Maastricht Guidelines* were devised and asserted that “any person or group who is a victim of a violation of

¹⁹³.Supra Note 182,Rakeb Messele, P.37

¹⁹⁴.Supra Note 87,ICCPR,Article 2(3)(a-c)

¹⁹⁵.Supra Note 88,ICERD,Article 6

¹⁹⁶.Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly in resolution 39/46 of 10 December 1984 at New York, entered into force on 26 June 1987, Article 14(1&2);See also UN CESCR, General Comment No.9,Para.3

an economic, social or cultural right should have access to effective judicial or other appropriate remedies at both national and international levels.”¹⁹⁷ In addition, to address such evolving substantive and procedural justice, the United Nations has developed the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of violations of human and humanitarian laws.¹⁹⁸ This document also provides scheme of arrangement for the reparation for harm suffered,¹⁹⁹ and violations of International Human Rights and Humanitarian Law.²⁰⁰

The CESCR also adopted a General Comment No. 9 dealing with the domestic application of the rights enumerated in the ICESCR that provides “... the obligation upon each State party to use all the means at its disposal ... Thus ... appropriate means of redress, or remedies must be available to any aggrieved individual or group, ...”²⁰¹ Furthermore, the Committee provided long list of component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies actually depending on the legal system.²⁰² Hence, by reading the international human rights instruments, guidelines, principles, the jurisprudence of the CESCR the victims of housing violations can have judicial remedies and administrative at national levels; where it fails international even though the extent of implementation is potentially different.

3.6. Monitoring the Human Right to Adequate Housing under the Universal System

Monitoring is the process of systematically tracking and assessing State performance against clear benchmarks and targets which requires, first and foremost, data collection and analysis,

¹⁹⁷. Supra Note 184, Maastricht Guidelines, *Para. 22*

¹⁹⁸. United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN.Doc.A/RES/60/147, (2006).

¹⁹⁹. Ibid, that include restitution, principle 19; compensation, principle 20; rehabilitation, principle 21; satisfaction, principle 22; and guarantee for non-repetition, *principle 23*

²⁰⁰. Id, For instance, look at among others *Part I, Principle 1* which stipulates obligation to respect means to ensure respect for and implement international human rights law and international humanitarian law .

²⁰¹. UN Committee on Economic, Social and Cultural Rights, General comment No.9, the domestic application of the Covenant, UN.Doc. E/C.12/1998/24,(1998),*Para.2*

²⁰². Supra Note 185, CESCR, *General Comment No. 4, paragraph, 17*. They include but not exhaustive, legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; legal procedures seeking compensation following an illegal eviction; complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; allegations of any form of discrimination in the allocation and availability of access to housing; and complaints against landlords concerning unhealthy or inadequate housing conditions.

involving not only official statistics, but possibly also field observation and investigations or even fact-finding delegations.²⁰³ The Maastricht Guidelines dictates that documenting and monitoring violations of economic, social and cultural rights including housing rights should be carried out by all pertinent actors including NGOs, national governments and international organizations.²⁰⁴ Therefore, monitoring the implementation of certain rights in general and housing right in particular has two aspects: monitoring organs and monitoring mechanisms or tools.

3.6.1. Monitoring Organs

The United Nations system has two track system of human rights enforcement: Charter-based organizations and Treaty-based Organizations.

A. Charter-Based Organs

These are supervisory organs which are based on the constitution or charter of an intergovernmental human rights forum, or on decisions taken by the assembly or a representative body of the forum in question.²⁰⁵ A plethora of organizations are evolved and evolving in the concern of housing rights at universal level. These organs include: the UN General Assembly(herein after UNGA); High Commissioner for Human Rights; the Economic and Social Council (herein after ECOSOC), the UN Commission on Human Rights; UN Sub-Commission and other UN agencies which are established for the promotion, supervision and protection of human rights in general and housing right in particular. But, for the sake of convenience the discussion of this section commences from lower carrier of the UN system which have directly defined powers concerning housing rights. But, this does not mean that the highest hierarchy of UN cannot oversee the duties of states on housing rights.²⁰⁶ For instance, the UN Commission on

²⁰³ Supra Note 124, Handbook for NHRIs, P.58

²⁰⁴ Supra Note 197, *Maastricht Guidelines*, Part V, *Guideline 32*

²⁰⁵ Supra Note 107, Magdalena Sepulveda, ... (et al), p.53

²⁰⁶ For instance, look at the resolutions of General Assembly, Resolution 41/146: Realization of the right to adequate housing, adopted 4 December 1986, UNDocA/RES/41/146, Paras.4 & 5 that gives due regard to homelessness; and Resolution 42/146: Realization of the right to adequate housing, adopted 7 December 1987, UNDoc.A/RES/42/146, Para.4 ; Commission on Human Rights, Resolution 1986/36: The realization of the right to adequate housing, adopted 12 March 1986, UNDoc E/CN.4/RES/1986/36, Para.3 where it decided to go ahead with the realization of housing right; Resolution 1987/22: The realization of the right to adequate housing, adopted 10 March 1987, UNDoc E/CN.4/RES/1987/22, Para.6, where it requested the Secretary General to give due attention to promotion of housing right; Resolution 1988/24: The realization of the right to adequate housing, adopted 7 March 1988, UNDoc E/CN.4/RES/1988/24, Para.5 where it decided to keep the question of the right to adequate housing under periodic review.

Human Rights is directly relevant²⁰⁷ as its central role in the supervision of human rights and is authorized to appoint special rapporteurs, representatives, experts and working groups on specific rights, subject to the approval of the ECOSOC. But, this organ has been substituted by the UN Human Rights Council through UNGA Resolution 60/251, which has special monitoring mechanism-Universal Periodic Review.

i. The UN Human Rights Council and Universal Periodic Review

This UN organ oversees states compliance through the Universal Periodic Review (herein after UPR) which is new human rights mechanism created on March 15, 2006 by the UN General Assembly resolution 60/251 that was created in response to criticism that previous UN mechanisms focused too much on certain regions.²⁰⁸ According to *Bejar*, the UPR reviews the fulfillment by all 192 UN member States on their human rights obligations and commitments, as well as their progress, challenges, and needs for improvement at every four years through an interactive dialogue between the country that is reviewed and any other UN country. It also rendered important resolutions²⁰⁹ pertaining to the human right to adequate housing.

ii. Office of High Commissioner for Human Rights

The Office of High Commissioner for Human Rights (OHCHR) has given increased attention to the promotion of housing rights, as the co-coordinator of the human rights program within the UN system.²¹⁰ According to this report, it has published fact sheets on 'the human right to adequate housing' and 'forced evictions and human rights' and more recently launched a dedicated website²¹¹ to provide the broader public, as well as governments, with basic information relevant to housing rights.

²⁰⁷Angel Alonso Arroba," the New United Nations Human Rights Council:" What Has Changed? What Can Change? *Crossroads*, (Vol. 6, no. 2, 2006), P.66.On 15 March, 2006, UNGA approved the creation of new body by its resolution UNGA Resolution 60/251; in an attempt to de-politicize the UN's approach to this area. The old Commission ceased its work on 16 June 2006.

²⁰⁸Tatiana Bejar ,*A Practical Guide to the United Nations' Universal Periodic Review (UPR)*, Human Rights Project at the Urban Justice Center, New York, January 2010,(www.hrpjuc.org),last visited on 17 September 2012,p.6

²⁰⁹For instance look at Economic and Social Council, Resolution 1986/41: Realization of the right to adequate housing, adopted 23 May 1986, UNDocE/RES/1986/41,Para.4; Resolution 1994/8: Promoting the realization of the right to adequate housing, adopted 22 July 1994, UNDocE/RES/1994/8,Para.4 that urges the Secretary General to support the Special Rapporteur in all circumstances in the field of housing

²¹⁰Supra Note 165,United Nations Housing Rights Program Report No. 1, P.9

²¹¹<http://www.unhchr.ch/housing>

iii. Special Rapporteur/ Extra-Conventional Mechanisms/

This organ is among the special procedures which is the general name given to the mechanisms established by the Commission on Human Rights (herein after CHR) or the Sub-Commission to address either specific country situations or thematic issues.²¹² This report document provides that the special procedures are a way for the Commission/substituted by Human Rights Council/ to be constantly engaged on an issue of concern throughout the year and are most commonly either an individual, called a 'special rapporteur,' a 'representative' or an 'independent expert', or a group of individuals, called a 'working group'.

Although their mandates vary, they usually monitor, examine and report publicly on human rights situations in either specific countries or on major thematic human rights issues worldwide.²¹³ This report details that, the Special Rapporteur's methods of work include conducting country missions; investigating issues of concern; reviewing communications from individuals or groups alleging violations of the right to adequate housing and intervening, when appropriate, with Governments in connection with alleged violations; and reporting annually to the General Assembly and the Human Rights Council. Accordingly, the special rapporteurs on adequate housing²¹⁴ have played a major role in defining the human right to adequate housing, monitoring and in researching the problems of inadequate housing worldwide.

iv. The Commission on Human Settlements

This organ started its practical activities in 1993 in which it urged States to establish appropriate monitoring mechanisms; to provide indicators on the extent of homelessness; inadequate housing conditions, persons without security of tenure and other issues arising from the right to adequate

²¹².Supra Note 126,UN HABITAT and OHCHR, p.134

²¹³.Miloon Kothari, Economic, Social and Cultural Rights, Adequate Housing as a Component of the Right to an Adequate Standard of Living, Mission to Peru, E/CN.4/2004/48/Add.1,11 February 2004, P.45

²¹⁴.In 1993, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities under the Commission on Human Rights, appointed a Special Rapporteur on promoting the realization of the right to adequate housing- Mr. Rajindar Sachar who prepared four detailed reports and concluded his work in August 1995.In 2000, the Commission on Human Rights appointed Mr. Miloon Kothari of India as Special Rapporteur of the Commission whose mandate focuses on adequate housing as a component of the right to an adequate standard of living. His successor, Raquel Rolnik of Brazil, was appointed in 2008 by the Human Rights Council ,in United Nations Housing Rights Program Report No. 1, Housing rights legislation. Review of international and national legal instruments, Series of publications in support of the Global Campaign for Secure Tenure No. 05, Kenya, Nairobi, 2002, (<http://www.unhabitat.org/unhrp/pub>), last visited July 10,2011, P.10

housing.²¹⁵ The concerns of this organ may put positive impetus on the implementation of housing rights at national level.

v. The United Nations Human Settlements Program (UN-Habitat)

UN-Habitat is the United Nations agency for human settlements and is mandated by the General Assembly to promote socially and environmentally sustainable towns and cities with the goal of providing adequate shelter for all.²¹⁶ According to this report, to exercise its mandate, the UN-Habitat is implementing its Medium term Strategic and Institutional Plan for 2008-2013.

The United Nations Housing Rights Program (herein after UNHRP) was launched in 2002, as a joint initiative by the United Nations Human Settlements Program (herein after UN-HABITAT) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) as a direct response to United Nations Commission on Human Settlements Resolution 16/7 and United Nations Commission on Human Rights Resolutions 2001/28 and 2001/34.²¹⁷ This background paper explains that the objective of the UNHRP is to assist States and other stakeholders with the implementation of their commitments in the Habitat Agenda to ensure the full and progressive realization of the right to adequate housing as provided for in international instruments. Accordingly, the first phase of the UNHRP (2002-2004) focuses on five program areas among which monitoring and evaluation of progress of realization of housing rights is one. So, it can play influential role as a monitoring organ of the housing right.

In addition, in 2004 UN-Habitat established the Advisory Group on Forced Evictions to monitor unlawful evictions and identify and promote alternatives such as in situations of upgrading and

²¹⁵ Commission on Human Settlements, Resolution 14/6, The human right to adequate housing, Adopted 5 May 1993, UNDocHS/C/RES/14/6, Para.9; See also Commission on Human Settlements, Resolution 6/13-Refugees and the International Year of Shelter for the Homeless, Adopted 5 May 1983, UNDoc HS/C/RES/6/13, Para.5; Resolution 16/7, the realization of the human right to adequate housing, Adopted 7 May 1997, UNDocHS/C/RES/16/7, Para 5 that urges states to report on the implementation of Habitat Agenda, paragraph 61; Resolution 15/10. Priorities for national action to provide housing for all, Adopted 1 May 1995, UNDocHS/C/RES/15/10, Para.8, where it urged Governments and other agencies to develop large-scale affordable housing-credit systems, by which low-income households and the informal building sector can be assisted, with financial support in the housing sphere being directed towards people rather than towards housing.

²¹⁶ Supra Note 213, Miloon Kothari, P.45.

²¹⁷ United Nations Human Settlements Program (UN-HABITAT) and Office of the High Commissioner for Human Rights (OHCHR), Monitoring housing rights: Developing a set of indicators to monitor the full and progressive realization of the human right to adequate housing, Background paper for the 2003 expert group meeting on housing rights monitoring, United Nations Housing Rights Program Working Paper No. 1, Kenya, Nairobi, 2003, (<http://www.unhabitat.org/unhrp/pub>), last visited July 11, 2011, P.15

negotiated resettlement which reports to the Executive Director of UN-Habitat.²¹⁸ According to this document its constituents include experts from intergovernmental organizations, local authorities, central Governments, civil society and professionals in developed and developing countries.

vi. Non-Governmental Organizations (NGOs)

Non-governmental organizations (NGOs), parliamentarians, the media, and the public at large alert the international community to imminent or unfolding human rights tragedies and have watchdog capacity throughout the world.²¹⁹ Specially, vibrant INGOs and NNGOs play a key role in the reporting process, by providing the CESCR with first-hand information, in the form of 'shadow reports' which are now better documented than the official State report.²²⁰ For instance, these parallel or shadow reports will be considered by the CESCR in conjunction with its consideration of a State Party's periodic report.²²¹ This complements the national and regional mechanisms for the persons bringing claims of housing rights violations and helpful for the development of international jurisprudence on the housing rights. The second ground why the international community allowed NGOs according to *Porter* is that the rights holders, who are denied access to adequate food, clothing and housing, healthcare or education, are the most marginalized in society who rarely have access to international institutions.²²²

The good instance is the case of the Dominican Republic in which the written statement submitted by Habitat International Coalition on 3 December 1991 to the CESCR, played an important role.²²³ Based on this statement, backed up by facts gathered by local Community based Organizations (CBOs) and NGOs both within and outside the country, the Government of the Dominican Republic halted the pending forced eviction of some 70,000 persons. According

²¹⁸.Supra Note 175,Fact Sheet 21, p.46. Since its creation, the Advisory Group has been conducting fact-finding missions to Accra, Buenos Aires, Curitiba (Brazil), Istanbul (Turkey), New Orleans (USA), Port Harcourt (Nigeria), Rome and Santo Domingo. In its first two biennial reports, *Forced Evictions –Towards Solutions?*, published in 2005 and 2007, the Advisory Group documented cases of imminent or ongoing forced evictions in several countries and presented alternative approaches.

²¹⁹.Amani Ejami, *The Role of Human Rights Non-Governmental Organizations in the African Union and the New Partnership for Africa's Development*, Submitted in Partial Fulfillment of the Requirements of the Degree LLM, (Human Rights and Democratization in Africa), At the Faculty of Law, University of Pretoria, South Africa, (31 October 2003), P.22

²²⁰.Supra Note 176,Olivier De Schutter, P.800

²²¹.Supra Note 165,UN Housing Rights Program Report No. 1, p.75

²²².Supra Note 20,Bruce Porter, P.11

²²³.Supra Note 221,United Nations Housing Rights Program Report No.1, P.77

to this report document, this case illustrates not only how quasi-judicial bodies can effectively deal with violations of the right to adequate housing, but also how NGOs²²⁴ play a valuable role in monitoring and enforcing the realization of such right. However, the role and commitment of these organs may be barred by the political evil of certain governments, for instance by barring them not to move in their national jurisdictions.

B. Treaty-Based Organs/ Conventional Mechanisms/

Alike other treaties²²⁵, the ICESCR has a committee,²²⁶ charged with monitoring the implementation of the same by States parties, to receive and comment on reports from States, to interpret the rights in the treaties in more detail. So, the committee has two main monitoring mechanisms so as to check the national implementation of the provisions of the covenant in general and housing rights in particular: reporting and Constructive Dialogue.

i. Reporting Mechanisms

Actually reporting as a monitoring mechanism (tool) of human rights in general and housing rights in particular is a universal one. That is to mean in the UN system each of the UN agencies is expected to report to the highest organ of UN in hierarchy. So, to address the concern at hand it is more convenient to specifically discuss the report the treaty based organ-CESCR utilizes for monitoring the housing rights.

At the international level, the main obstacle to the realization of economic, social and cultural rights in general and housing rights in particular has been the lack of individual complaints procedures for violations of these rights since the ICESCR initially did not have an independent

²²⁴.For instance, the International Union of Tenants (IUT) is an NGO that seeks to represent, safeguard, and promote the interests of tenants. Founded in 1926 in Zurich (Switzerland), IUT now has 48 member organizations in 42 countries, 30 of which are in Europe and the Centre on Housing Rights and Evictions (COHRE) is an international NGO that works to promote and protect the right to housing through its program areas involving housing rights training, research and publications, monitoring, preventing and documenting forced evictions, fact-finding missions, housing and property restitution, women's housing rights, and active participation and advocacy within the United Nations and regional human rights bodies. See also Housing and Land Rights Violations in 2008–10, International Housing and Land Rights Day, 2010, Housing and Land Rights Network Habitat International Coalition, 4 October 2010, where it identified five key trends in violation and their related global themes, p.2

²²⁵.The seven main general human rights treaties have committees, charged with monitoring the implementation of the respective treaties by States parties.

²²⁶.Supra Note 102, Nisuke Ando, Para 4. The legal basis of General Comments adopted by the CESCR is a resolution of the ECOSOC (Resolution 1987/5 (26 May 1987), Supp 1 10–11). In that latter resolution the CESCR was instructed to prepare General Comments based on the various provisions of the ICESCR in order to assist States Parties to the Covenant in fulfilling their reporting obligations under the ICSECR.

treaty monitoring body that could receive individual complaints.²²⁷ According to *Ssenyonjo*, this omission was partially addressed by the creation of the CESCR, which became competent to receive and review regular national reports. So, the principal mechanism of supervision outlined in the ICESCR is a requirement that each ratifying party to the Covenant are required to submit regular periodic reports, which are then reviewed by the Committee that enables the same to adopt ‘concluding observations’ and ‘general comments’ based on the review process.²²⁸ But, on 10 December 2008 the General Assembly adopted the Optional Protocol.²²⁹ Hence, upon the entering into force of the Optional Protocol on the ICESCR, the CESCR would have three additional monitoring mechanisms: Individual Complaint, interstate communications and inquiry procedure which are envisaged under the Optional Protocol *Articles 2, 10 and 11* respectively.

ii. Constructive Dialogue

In addition to the reporting mechanism, the CESCR strives to develop a “constructive dialogue” with States Parties submitting periodic reports outlining the legislative, judicial, policy and other measures which they have taken to ensure the enjoyment of the rights contained in the Covenant.²³⁰ This notion is envisaged in the Committee’s jurisprudence as an initial objective of reporting obligation that to ensure a comprehensive review which is undertaken with respect to national legislation, administrative rules and procedures, and practices in an effort to ensure the fullest possible conformity with the Covenant.²³¹

The constructive dialogue is implied from the reporting procedure that the state concerned upon submitting information through report, the CESCR identifies list of issues and receive information from NGOs through shadow report. Then, the committee brings the themes and issues identified from the two reports and oral response, to the knowledge of state party and conduct dialogue with the state representatives on the specific theme and issues identified say on

²²⁷.Supra Note 104,Manisuli Ssenyonjo, P.972

²²⁸.Supra Note 212,UN HABITAT and OHCHR, Indigenous Peoples’ Right to Adequate Housing, p.135

²²⁹.Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the General Assembly adopted resolution A/RES/63/117, on 10 December 2008

²³⁰.Recommendation of the Commissioner for Human Rights of council of Europe on the Implementation of the Right to Housing, CommDH (2009)5, Strasbourg, 30 June 2009, p.9

²³¹.UN Committee on Economic, Social and Cultural Rights, *General Comment No.1*, Reporting by States Parties, UN.Doc.E/1989/22, (1989), *Para 2*

forced eviction.²³² So, such constructive dialogue paves the way for the future compliance and steps forward for state concerned and it helps the committee to issue concluding observations and general comments that would be useful for interpreting the covenant's provisions.

On the contrary, States have regularly been late or fail in submitting their reports to the human rights treaties expert bodies for which *Schutter* identified two grand reasons: administrative incapacity including a lack of specialist expertise or lack of political will, or a combination of both.²³³ So, the willingness of states parties to put such findings on the ground has great disparity throughout. Secondly, since the monitoring mechanism through reporting utilizes simple calling and shaming techniques of enforcement, it is not as such cost effective.

3.7. Jurisprudential Development on the Human Right to Adequate Housing

This section is more concerned on the issue of the justiciability of economic, social and cultural rights in general and housing rights in particular. But, before indulging into the issue whether housing rights are justiciable or not, it is convenient to define what is meant by justiciability. Justiciability is concerned with the amenability of a cause or matter to litigation; for example a determination that a claimed right is cognizable in the courts or quasi-judicial bodies, using the normal procedures of litigation.²³⁴ *James* argues that traditionally, there has been hostility towards the judicial enforcement of socio-economic rights since they involve complex resource allocation so that best suited for decision by the democratically elected law makers.²³⁵ This author admits, however; that the argument is traditional.

By the same token, *Brennan* contends that the rampant criticisms of socio-economic rights have often focused on a courts inability to play such an important role in the adjudication and

²³².Look at for instance, *Angola. 1st, 2nd, and 3rd Reports*, Committee on Economic, Social and Cultural Rights, 41st Session 12-13 November 2008, (www.ishr.ch),last visited on 18 September 2012.Where NGOs were very concerned on the forced evictions carried out by government.

²³³.Supra Note 220, Olivier De Schutter, P.803. But, various solutions are devised, according to this author which include: the elimination of reporting and its replacement by detailed questions to which answers must be given; the preparation of a single consolidated report to satisfy several different requirements; and the much wider use of a more professional advisory services program designed to assist in the preparation of reports that is provided under harmonized guidelines on reporting(Harmonized Guidelines on Reporting under the International Human Rights Treaties, including Guidelines on a Common Core Document and treaty-specific targeted documents (HRI/MC/2005/3, 1 June 2005))

²³⁴.Supra Note 16,Modibo Ocran, P.4

²³⁵.Supra Note 13,Asha P James, p.4

enforcement of socio-economic rights.²³⁶ *Verma* strengthens this line of argument in that while it is argued in theory that ESCRs are not justiciable, there is sufficient case law to demonstrate otherwise and to illustrate the potential for future legal action against the violation of the same.²³⁷ *Nowak* substantiates the above arguments in a universal sense that human rights treaties and conventions are living instruments, constantly developed through the jurisprudence of the international courts and expert bodies responsible for international monitoring which have given the initial standards dynamic interpretations far beyond their original meanings, adapting their provisions to current situations.²³⁸

Furthermore, *Ssenyonjo* supports this argument in that, unlike *Article 2* of the ICCPR, *Article 2* of the ICESCR is weak with respect to implementation.²³⁹ According to *Ssenyonjo*, to remedy such legal gap the groups of experts in international law adopted the *Limburg Principles* on the Implementation of the ICESCR in 1986 and the *Maastricht Guidelines* on Violations of Economic, Social and Cultural Rights in 1997. The author adds that the CESCR has also, in numerous General Comments²⁴⁰ and statements, spelt out the content of state obligations, developed historic jurisprudences and individual/group rights under the Covenant. Furthermore, the committee has used the general comments as a means of developing a common understanding of the norms by establishing a prescriptive definition and normative contents of the human right to adequate housing.²⁴¹ These general comments have jurisprudential values in the current situations of the world. For instance; regional quasi-judicial organs²⁴² site these documents as if they are binding.

The next concern is whether housing right has justiciable components. Now a days, the right to adequate housing, has increasingly been the subject of judicial and quasi-judicial review at the national and international levels that helped for the growing body of housing rights

²³⁶.Supra Note 19,Mariette Brennan, p.81

²³⁷.Supra Note 166, Shivani Verma, P.13 This author by making reference to various reports of COHRE and brings the practical instances of the justiciability of ESCR. According to this author, evictions have been prevented in the Dominican Republic and compensated in Serbia Montenegro.

²³⁸.Supra Note 191,Manfred Nowak, P.20

²³⁹.Supra Note 227,Manisuli Ssenyonjo, P.976

²⁴⁰.For instance look at, *General Comments No.4* (the right to adequate housing),General Comment No. 7(forced eviction in the context of housing right), and General Comment No.16(equality of men and women in the context of economic, social and cultural rights including housing)

²⁴¹.Claude Cahn,Slums, the Right to Adequate Housing and the Ban on Discrimination, the Equal Rights Trust Review,(vol.1,2008), (www.equalrightstrust.org),Last visited 18 July 2011,p.60

²⁴².Look at the Social and Economic Action Rights Centre(SERAC)vs. Federal Republic of Nigeria, Communication No.155/96,at 30th ordinary session held in Banjul, the Gambia from 13th to 27th October 2001,*Para. 63*

jurisprudence.²⁴³ This document identified the aspects of the right to adequate housing which can be pursued via litigation: forced evictions and demolition; security of tenure; non-discrimination and equality of access; housing affordability; landlord-tenant relations; access to Services; property rights; the substantive right to accommodation; so and so forth. Not only the CESCR with the concern in building housing rights jurisprudence at the international level, but also other committees are concerned. For instance, in *L.R. et al v Slovakia* in March 2005, the UN Committee on Elimination of Racial Discrimination (CERD) found Slovakia in violation of *Article 5 (e) (iii)* of CERD as a result of the actions of the municipality of Dobsina, which agreed to cancel a social housing project which would have benefited the Roma Community in accessing to housing in Dobsina town.²⁴⁴

On the other hand, since the complaint mechanisms under the ICESCR are recent phenomena, the CESCR have not developed valuable jurisprudences upon considering communications of different nature unlike other treaty bodies of the UN system. The jurisprudences of the committee developed through concluding observations; general comments; recommendations; and statements are considered by states non-binding and usually remain futile.

3.8. Concluding Remarks

This chapter has discussed the six key aspects of the human right to adequate housing under the universal human rights norm that enable one to understand the right. These key aspects include: the universal normative frameworks; states duties; violations; remedies for violations; monitoring; and jurisprudential development on the human right to adequate housing. The universal normative frameworks of the human right to adequate housing that include the hard laws; soft laws; and others are selectively scrutinized and the paper concluded that the universal human rights system has comprehensive normative frameworks on the housing rights. The states duties on the human right to adequate housing enables one to understand what are expected of states for the realization of the right under consideration. These state duties can be categorized into general state duties; generic state duties; immediate state duties; and duties fall under

²⁴³.Centre on Housing Rights and Eviction (COHRE) and The National Law Center on Homelessness & Poverty (NLCHP), Housing Rights for All: Promoting and Defending Housing Rights in the United States: A Resource Manual on International Law and the Human Right to Adequate Housing, (4thed, 2009), (www.cohre.org) and (<http://www.nlchp.org/>), last visited July 13,2011,P.132

²⁴⁴.Supra Note 241,Claude Cahn,*Slums*,p.60

progressive realization. The chapter also scrutinized what acts of commission or omission constitutes violations of the human right to adequate housing.

The chapter also has discussed the possible remedies upon the materialization of the violations of the right and concluded that the ICESCR fails to provide remedies for the violations of economic, social, and cultural rights therein. Rather, these remedies are provided by other soft laws which have no binding effects on states. The chapter also duly examined the monitoring organs and mechanisms for the implementation of the right and concluded that there have been a plethora of organizations for the monitoring purpose of the right under consideration, but with crippled monitoring mechanisms. It has also probed the dilemma of the justiciability issue of the human right to adequate housing. Hence, the chapter concluded that while measuring the human right to adequate housing against those key aspects, the international community exerted intensive effort to define, protect, promote, implement, monitor and realize the right to housing. But, there has been challenges to take remedial actions for the violations of the right and to put the right on the ground through jurisprudential values that is attributable to different factors among which is the lack of both individual and inter-state compliant mechanisms under the ICESCR at its very inception and the crippled monitoring tools of reporting which usually ends up with simple enforcement of calling and shaming. Putting otherwise, since the complaint mechanisms under the ICESCR are recent phenomena, the CESCR have not developed valuable jurisprudences upon considering communications of different nature unlike other treaty bodies of the UN system. The jurisprudences of the committee developed through concluding observations; general comments; recommendations; and statements are considered by states non-binding and usually remain futile.

The next chapter four of the thesis is designated to make critical comparative analysis, by comparing and contrasting the six universal key aspects of the human right to adequate housing with that of Inter-American; European; and African human rights systems with the special emphasis of the key aspects of the human right to adequate housing. Thus, the chapter would come up with the conclusion that there is no uniform definition of the key aspects of the human right to adequate housing.

Chapter Four-The Key Aspects of the Human Right to Adequate Housing Seen from the Perspective of Regional Human Rights Systems

4.1. Introduction

Before indulging into introducing the chapter, it is crucial to highlighting about the regional system since the status of the regional legal systems is sometimes confusing as to whether they are inferior to the universal system or otherwise. Certain scholars forward their views on their relationships. Accordingly, *Drost* argues that the United Nations human rights system continues on a universal basis in line with universal values that should not jeopardize the UN systems and operations and offer a most fertile ground for common actions.²⁴⁵ This author further contends that the regional human rights systems are there to make easy access and celebrate the universal human rights values within relatively identical ethnic, social, political, religious, cultural, and economic contexts so that they are supplementary than mutually exclusive. *Nakuta* repeats the same line of argument in that the global human rights system is complemented by regional mechanisms in the Inter-America, Africa, and Europe in which case treaties with strong monitoring and redress mechanisms have been developed in these supranational systems.²⁴⁶

Olowu optimizes regional human rights systems in that they are commonly thought to be potentially more effective than UN mechanisms, since they are able to take better account of regional conditions like certain values and customs peculiar to the continent.²⁴⁷ But, the considering of certain specific regional values may count danger on human rights. So, they are expected to operate within the local context, but without jeopardizing the universal values what the international community commonly celebrates.

Coming to the introduction of the chapter, the central theme of this chapter focuses on the comparative analysis of the key aspects of the human right to adequate housing under the Inter-

²⁴⁵.Pleter N.Drost, *Human Rights as Legal Rights: the Realization of Individual Human Rights in Positive International Law-General Discussion and Tentative Suggestions on the International System of Human Rights*, A.W.Sijthoff Leyden, (1965), p.41, according to this author, the regional human rights systems create better chances to achieve practical results within the orbit of nations with ethnical, religious, linguistic or cultural kinship or with close ties and common interests in political and economic life. But, to achieve this very purpose, according to this author, they have to go fully in harmony with the aims and purposes of UN human rights system as they will greatly enhance the chances of a universal promotion of human rights within the territories of all United Nations.

²⁴⁶.John Nakuta, *The Justiciability of Social, Economic and Cultural Rights in Namibia and the Role of the Non-governmental organizations*, p.10

²⁴⁷.Supra Note 43,Dejo Olowu, p.52

Americas; Europeans; and Africans taking the UN system as a universal norm against which these supranational human rights systems are going to be evaluated. For the sake of convenience the key layers of the human right to adequate housing defined under the universal system, also be redefined against each regional system so as to compare and contrast the entire systems including the universal one. These key aspects include: the normative frameworks; state duties; violations; remedies upon materialization of violations of housing rights; monitoring; and jurisprudential development on the human right to adequate housing. The chapter is divided into three sections which have sub-sections to critically scrutinize each key aspect of the housing rights against individual regional human rights system.

Accordingly, in section 4.2, the chapter deals with the key aspects of the human right to adequate housing under Inter-American Human Rights System which are broken down into sub-sections to include: the normative frameworks; state duties; violations; remedies upon materialization of violations of housing rights; monitoring; and jurisprudential development on the human right to adequate housing. Section 4.3 tries to address the layers of the human right to adequate housing under European Human Rights System. By the same token, section 4.4 shall scrutinize those key aspects of housing rights under African Human Rights System.

Finally, the chapter winds up with concluding remarks. Hence, the chapter concludes that where the key aspects of the human right to adequate housing under the three regional human rights systems against those key aspects of the universal one, the paper managed to extract great disparities amongst the regions in the one hand and under the universal system on the other in defining, protecting, promoting, and realizing the human right to adequate housing. Unlike the regional ones except for European human rights system, a plethora of organizations evolved in the protection and promotion of housing rights under the universal system, but with crippled enforcement mechanisms. The chapter also concludes that the discrepancies that exist in jurisprudential development on the housing rights to put the right on the ground. Accordingly, the chapter concludes that the European human rights system the model one since it totally dehydrated the quasi-judicial organ and insisted purely on judicial remedy in its monitoring system except for the execution of judgment that entrusted to Committee of Ministers.

The next chapter five of the thesis attempts to derive certain conclusions and recommend some important points that contribute for both conceptual and practical development on housing rights.

4.2. The Key Aspects of Housing Rights in the Inter-American Human Rights System

4.2.1. Normative Contents of the Human Right to Adequate Housing

The Inter-American Human Rights System (herein after IAHRs) on human rights has several standards relevant to the promotion and protection of housing rights. The following human rights instruments are the outstanding ones.

A. The American Convention on Human Rights (Pact of San Jose)

The American Convention on Human Rights (herein after ACHR) primarily concerned with civil and political rights. But, *Article 26* expresses the general commitment of states parties to adopt measures with a view to the full realization of economic, social and cultural rights which reads “The States Parties undertake to adopt measures ...the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards ...”²⁴⁸ It also defines the right to property which the ratifying States parties have agreed to respect and ensure under *Article 21(1)* which reads “Everyone has the right to the use and enjoyment of his property.”²⁴⁹ To assimilate property right to housing right is controversial as addressed under chapter two of this thesis and further the paper holds discussion under the African human rights system, item ‘jurisprudential development on the human right to adequate housing.’

B. Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (‘protocol of san Salvador’)

The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, otherwise known as the “Protocol of San Salvador,” represents the first legally binding Inter-American human rights document devoted to economic, social and cultural rights. But, it does not make any direct mention of either the right to property, nor to the right to housing. However, certain Articles of the Protocol and its preamble are relevant to these rights. For instance, paragraph three of its preamble provides that “Considering the close relationship that exists between economic, social and cultural rights and civil and political rights,

²⁴⁸.The American Convention on Human Rights (ACHR)was adopted by the Inter-American Specialized Conference on Human Rights on 22 of November 1969 at San José and entered into force on 18 July 1978, *Article 26*

²⁴⁹.Id, *Article 21(1)*

in that the two categories of rights constitute an invisible whole ...”²⁵⁰ In addition, *Article 11(1)* of the same states: “Everyone shall have the right to live in a healthy environment and to have access to basic public services.”²⁵¹ Among the basic public services housing can be mentioned.

C. The Charter of the Organization of American States

The Charter of the Organization of American States (herein after OAS), *Article 34(k)* states, “Member States agree to devote their utmost efforts to accomplishing the following basic goals... (k) adequate housing for all sectors of the population.”²⁵² This provision seems more comprehensive in setting the standard of housing, the maximum duties of states parties and the beneficiaries of the right, even though it is not in strong legal provision since it has been formulated in the sense of progressive realization. Second, the provision is not selective as it is difficult to fulfill housing for all sectors of the population. By the same token, *Article 13* of the Inter-American Democratic Charter provides that “The promotion and observance of economic, social, and cultural rights are inherently linked to integral development ...”²⁵³ By way of inference and as per the definition addressed under chapter two of this thesis, one of the economic, social and cultural rights is housing right.

D. Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities

Article 3(1) (a) of this document provides: “... the states parties undertake: 1...a. Measures to eliminate discrimination...in providing or making available goods...such as ... housing...”²⁵⁴

²⁵⁰.Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (‘protocol of san Salvador’), adopted at the 18th regular session of the General Assembly of the Organization of American States held in San Salvador on 17 November 1988,entered into force on 16 November 1999,Preamble,*Para.3*

²⁵¹.Id, *Article 11(1)* of Protocol of San Salvador to ACHR

²⁵².Charter of the Organization of American States (1951), 119 U.N.T.S. 3, *entered into force* December 13, 1951; amended by Protocol of Buenos Aires, 721 U.N.T.S. 324, O.A.S. Treaty Series, No. 1-A, *entered into force* Feb. 27, 1970; amended by Protocol of Cartagena, O.A.S. Treaty Series, No. 66, 25 I.L.M. 527, *entered into force* Nov. 16, 1988; amended by Protocol of Washington, 1-E Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add. 3 (SEPF), 33 I.L.M. 1005, *entered into force* September 25, 1997; amended by Protocol of Managua, 1-F Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add.4 (SEPF), 33 I.L.M. 1009, *entered into force* January 29, 1996, *Article 34(k)*

²⁵³.Inter-American Democratic Charter, adopted by the General Assembly of the Organization of American States at its special session held in Lima, Peru, on 11 September 2001, *Article 13*

²⁵⁴.Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities, adopted at Guatemala City, Guatemala, at the 29th regular session of the OAS General Assembly, June 7, 1999,entered into force on 14 September 2001, *Article 3(1) (a)*

So, the right to housing meant to cover one of the public goods that should be free of discrimination on the ground of disability while providing to other sectors of the society.

E. American Declaration on the Rights and Duties of Man

The American Declaration has some provisions with respect to housing and property rights. These provisions are more of procedural protections of residential homes than defining the substantive right of housing. These include *Articles 8, 9, 11, and 23*.²⁵⁵ *Article 8* provides “Every person has the right to fix his or her residence within the territory of the state of which he or she is a national ...” By the same token, *Article 9* states “Every person has the right to the inviolability of his or her home.” Similarly, *Article 11* of the same declares that “Every person has the right to the preservation of his or her health through sanitary and social measures relating to food, clothing, housing and ...” This latter provision seems inspired by *Article 2(1)* of the ICESCR which puts resource constraint for the full realization of the rights under the same. *Article 23* of this instrument provides that “Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.” This last article connected the right to housing with that of private property which is controversial. This controversial issue shall be addressed under African human rights system item ‘jurisprudential development on the human right to adequate housing’.

In general, the Inter-American human rights system recognizes the human right to adequate housing of ‘every one’. But, unlike that of universal human rights system which provide comprehensive definition and strong normative framework of housing rights, the American one incorporates loose definition and weak standard most of which are procedural protection than substantive elaboration of the right. The system also usually reads the human right to adequate housing into general property right which amounts to indirect justiciability of housing rights that subject to argument. Unlike the universal one, it is difficult to see the continuous endeavors to define, promote, protect, and implement the right through declarations; resolutions; conferences; comments; recommendations; statements and the like. The ideological background of the member states of the system might be the grand reason for such loose normative framework, as discussed in the background and literature review section of this paper.

²⁵⁵. American Declaration on the Rights and Duties of Man, adopted by the Ninth International Conference of American States, on 2 May 1948 in Bogotá, Colombia, *Articles 8, 9, 11, 23*

4.2.2. The Duty of States on the Human Right to Adequate Housing in the Inter-Americas

The one who carefully grasps the provisions those provide housing rights, can safely conclude that each legal provision casts the duties of states for the realization of the same. For instance, *Article 26* of the American Convention on Human Rights provides that “States parties agree to undertake to adopt measures ... especially those of an economic and technical nature ...” So, for the realization of housing rights this provision articulates the measures states parties are expected to take in open ended clause that “... or other appropriate means”.

Gomez summarizes the duties of states in mathematical calculation by linking *Article 26* of American Convention on Human Rights to the Charter of the Organization of American States that provides one of the clearest articulations of housing rights in the Inter-American human rights system.²⁵⁶ Accordingly, *Article 26* of the Convention cumulative with *Article 34(k)* of the Charter meant to provide “the States Parties undertake to adopt measures ... with a view of achieving progressively ... the full realization of the right ... to adequate housing for all sectors of the population.”

In addition, although the Additional Protocol to the American Convention on Human Rights has no direct reference to housing rights, it imposes legal duties on member states from *Articles 1* through *4*.²⁵⁷ Similarly, the Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities under its *Article 3(1) (a)* provides: “To achieve the objectives of this Convention, the states parties undertake... or any other measures.” These are also non-exhaustive lists of duties of states to take measures so as to realize the right to housing. *Article 14* of Inter-American Democratic Charter imposes “periodic review of progress against poverty to review periodically the actions adopted and carried out by the Organization of American States to promote dialogue ...” Among the poverty the international community recognized is housing poverty.

²⁵⁶ Mayra Gomez, *Enforcing Housing Rights in the Americas: Pursuing Housing Rights Claims within the Inter-American System of Human Rights*, A Resource Guide for Practitioners, Centre on Housing Rights and Evictions (COHRE), Geneva, Switzerland, 2002, (www.cohre.org), last visited July 14, 2011, p.14

²⁵⁷ Supra Note 250, Additional Protocol to the American Convention, *Article 1* to adopt measures; *Article 2* to enact domestic legislation for making those rights a reality; *Article 3* to avoid discrimination of any kind; *Article 4* the inadmissibility of restrictions on the pretext that this Protocol does not recognize the right or recognizes it to a lesser degree.

to have fertile ground for the jurisprudential development that influences the whole system of human rights in the region. Second, the system makes the right to remedy 'everyone's right'. Third, the remedy that everyone seeks should be judicial one. Fourth, the remedy is available for both violations of national laws and the American convention, unlike that of the universal one under which the ICESCR which is a grand document on the economic, social, and cultural rights fails to provide remedies for violations of the rights therein. Rather, these remedies are provided under the soft laws which have no binding effects on states.

4.2.5. Monitoring of the Human Right to Adequate Housing in the Inter-Americas

As it is true in other human rights system, monitoring has two aspects under IAHRs: monitoring organs and mechanisms.

A. Monitoring Organs

Various organs of the OAS have a degree of responsibility regarding human rights which include: the General Assembly; the Permanent Council; the Inter-American Commission on Human Rights; and the Inter-American Court of Human Rights. But, the most relevant organs in the protection and promotion of housing rights are the Inter-American Commission on Human Rights (herein after IACHR); and the Inter-American Court of Human Rights.²⁶⁰ These organs shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to the Convention and other human rights instruments pertaining to housing rights.

i. The Inter-American Commission on Human Rights

The Commission is characterized by a unique 'dual role', which reflects its origin as a Charter-based body and later transformation into a treaty body when the American Convention came into force.²⁶¹ It received the competence to examine individual communications, and to prepare on that basis a report containing its opinion as to whether or not the State concerned had violated its

²⁶⁰.Id.,ACHR, *Article 33*

²⁶¹.Supra Note 205, Magdalena Sepulveda... (et al), P.148.

human rights obligations within the meaning of *Article 50* of American Convention on Human Rights (ACHR),²⁶² and *Article 57* of its Rules of Procedures.²⁶³

Accordingly, the commission is empowered to receive individual petitions by any person or group of persons, or any non-governmental entity legally recognized in one of more member states of the Organization as per *Article 44* of the ACHR. It can also entertain inter-state complaints when the state concerned deposits its instrument of ratification or of adherence to this Convention, or at any later time, declare that it recognizes the competence of the Commission as per *Article 45* of the same.

ii. The Inter-American Court of Human Rights

The Court came into being in 1979 following the entry into force of the American Convention. The Court is the supreme judicial organ established by the American Convention and exercises both contentious (*Article 61* of ACHR) and advisory jurisdiction (*Article 64* of ACHR). However, unlike the European human rights court, the Inter-American human right Court is a part-time body. What is more, as per *Article 61(1)* ACHR only states parties to the Convention and the Commission have the right to submit a case to the Court, unlike the European Court of Human Rights which is open for everyone and organization. The Court can only deal with individual complaints when they have been considered by the Commission, and referred to it by the same. On the contrary, States parties can bring cases directly to the Court having accepted its jurisdiction (*Article 62(1)* of the ACHR.). On the contrary, unlike in the Inter-Americas, in the European human rights system any person or group of persons, or any non-governmental entity to lodge petition before the European Court of Human Rights is expected to show that she/it is the direct victim of the violation as per *Article 34* ECHR, but is not expected to declare for the acceptance of its jurisdiction in inter-state complaint.

The decisions of the Court are only binding on the parties to the case, whereas; the Court's interpretation of the rights contained in the Convention are authoritative and have a greater practical significance than their formal status would suggest.²⁶⁴ That is to mean the interpretation or the application of the ACHR is *ipso facto* binding on any member state within the meaning of

²⁶².According to *Articles 45* of ACHR the Commission has power-to receive communications; *Article 41(g)* of the same to submit an annual report to the General Assembly of the Organization of American States; and *Article 61(1)* of the same to submit a case to the Inter-American Court of human rights

²⁶³. Rules of Procedure of the Inter –American Commission of Human Rights in Effect as of 1 May 2001, *Article 57*

²⁶⁴.Supra Note 261, Magdalena Sepulveda,...(et al), P.151

Article 62(1) of the same. The reason might be most of the Inter-American Human Rights member states follow common law legal system.

Hence, where the Court's judgment stipulates compensatory damages that may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state as per *Article 68 ACHR*; unlike that of European system the execution of which is monitored by the committee of ministers. Thus, unlike the European human rights system which promotes and protects housing rights through a single judicial system; the universal one protects the same through a committee, and the Inter-American system through dual tracks and African human rights systems monitor the same through the human rights commission. So, the Europeans totally dehydrated the quasi-judicial organ from monitoring system except for the execution of the judgment of the court.

B. Monitoring Mechanisms in the Inter-Americas

i. The Annual Report

The Inter-American human rights commission as part of its main function can submit the Annual Report²⁶⁵ which includes a broad range of information, *inter alia*, on individual cases, requests for precautionary measures and mini-country reports as well as a chapter on areas in which steps need to be taken towards full observance of the human rights set forth in the American Declaration of Human Rights (herein after ADHR) and the ACHR.²⁶⁶ So, the General Assembly of the OAS can easily scrutinize two things at the same time: the performance of the Commission, and the situations of human rights including housing rights in individual states parties. This holds true for the Inter-American court of human rights where the court shall report to the General Assembly of OAS whether the states parties are in compliance with its judgments within the meaning of *Article 65* of ACHR. Unlike that of Africans, the Commission has its own publications, including its Annual Report and occasionally it publishes Special Reports on thematic topics and Country Reports examining the situation of human rights in particular

²⁶⁵ Supra Note 260, IACHR, Article 41(g)

²⁶⁶ Statute of the Inter-American Commission on Human Rights, approved by Resolution No. 447 taken by the General Assembly of the OAS at its ninth regular session, held in La Paz, Bolivia, October 1979, Article 18

Member States.²⁶⁷ So, the IACHR is autonomous human rights institution, unlike that of African Human Rights Commission.

The commission has also been empowered to follow up and to publish its report where it finds that the state concerned failed to take measures according to the recommendation without the approval of superior organ (*Article 51* of ACHR). Accordingly, as an OAS Charter organ the Commission performs functions in relation to all member states of the OAS (*Article 41* ACHR) and as a Convention organ its functions are applicable only to states parties to the American Convention on Human Rights (ACHR). That is to mean *Article 41* of the American Convention develops the framework contained in *Article 112* of the OAS Charter, which establishes the principal function of the Commission: the effective promotion and defense of human rights.²⁶⁸

On the other hand, a certain position document empowers the same beyond such limit as it derives its mandate from OAS Charter, the American Declaration on the Rights and Duties of Man, the American Convention on Human Rights and other human rights treaties ratified and enforced in the region.²⁶⁹ But, the pre-condition of ratification may narrow down the power of the commission. On the other hand, *Article 23* of its rules of procedure empowers the same to entertain cases of violations of all laws in Americas in that any person or group of persons or non-governmental entity legally recognized in one or more of the member states of the OAS may submit petitions to the Commission, on their own behalf or on behalf of third persons, concerning alleged violations of a human right recognized in, as the case may be, all human rights instruments in Inter-American human rights system. So, pursuant to its rules of procedure the commission can entertain any violations of instruments in the region.

According to *Volio*, the Commission has no need for circumlocution(indirectly express) to promote and guarantee economic, social, and cultural rights since defense of these rights is already among the Commission's functions as per *Article 2* of the Statute of the Commission clearly states: "For the purpose of this Statute, human rights are understood to be those

²⁶⁷Lea Shaver, the Inter-American Human Rights System: An Effective Institution for Regional Rights Protection? Washington University Global Studies Law Review (Vol. 9:639 2010), (<http://ssrn.com/abstract=1437633>),last visited on 15 November 2012, p.658

²⁶⁸. Fernando Volio, "the Inter-American Commission on Human Rights," the American University Law Review (Vol. 30:651981),p.68

²⁶⁹.Position Document on the Process of Strengthening of the Inter-American System for the Protection of Human Rights, Approved by the Commission on April 8, 2012, provided by Special Working Group to Reflect on the Working of the Commission, Executive Summary Part, (<http://www.cidh.org>), p.2

consecrated in the American Declaration of the Rights and Duties of Man," which include rights of an economic, social, and cultural nature.²⁷⁰ So, the Inter-American Commission can promote, protect, and entertain all human rights cases including economic, social and cultural rights in which case housing rights are one, provided that the state concerned ratified the instrument which the claimant invokes. But, the rules of procedure seem to contradict with such procedural requirement.

ii. Periodic Reports

It is difficult to grasp the States parties reporting system from the normative frameworks as a means of protection of human rights in the Inter-Americas since most of the legal standards fails to provide the same. But, the Additional Protocol to ACHR provides that the States Parties to the Protocol undertake to submit periodic reports to the Secretary General of the OAS on the progressive measures they have taken to ensure due respect for the rights set forth in the same including housing rights on which the Inter-American human rights commission may formulate such observations and recommendations as it deems pertinent concerning the status of the economic, social and cultural rights which it may include in its annual report.²⁷¹ It follows therefore that periodic reports of the member states help the Commission to scrutinize the performance of states pertaining to housing rights. Secondly, the General Assembly can easily infer the status of socio-economic rights including housing rights from the annual report of the commission. But, unlike Inter-Americas, the Europeans are more systematic since the latter catalogued the rights into groups under which states report on annual basis on each catalogue every year.

4.2.6. Jurisprudential Development on the Human Right to Adequate Housing in Inter-American Human Rights System

The Inter-American human rights system has two sources of jurisprudences on housing rights: the decisions of the Inter-American Commission and Inter-American Human Rights Court. Accordingly, the Inter-American Commission has considered a number of cases that touch upon housing, land and property rights by reading the relevant provisions from the American Declaration and American Convention not only to protect general property rights, but also to

²⁷⁰.Supra Note 268,Fernando Volio, p.68

²⁷¹.Supra Note 257,Additional Protocol to IAHRC, *Article 19(1 and 2)*

protect housing rights.²⁷² This author takes the instance of *Comadres case* where the petitioners' alleged violations committed by the Security of Salvadoran State, *inter alia*, the right to privacy *Article 11* and the right to property *Article 21* of ACHR. But, the case inclines towards protecting procedural rights and general property right. So, the net product of housing cases entertained by the IACHR shows almost none when compared to the circumstances of the region where the incident of violations of housing rights like conflict and war are prevalent.

By the same token, the Inter-American Court of Human Rights has considered relatively few cases that relate to the right to housing claims under the American Declaration or the American Convention unlike that of the European Court of Human Rights, which entertained a number of housing cases.²⁷³ This author however, admits that the Inter-American Court has examined economic, social and cultural rights in the *Torres Benvento et al. v. Peru*, in which it implicitly admitted its competence to apply *Article 26* of American Convention in its contentious jurisdiction which opens the possibility for future claims of violations of the right to an adequate standard of living. This is in line with the argument of *Abramovich* that the jurisprudence of the IACHR, and especially of the Inter-American Court, has influenced changes in domestic jurisprudence in the region,²⁷⁴ but the list of the jurisprudence the author enumerated implies the inclination towards civil and political rights.

The case of the *Ituango Massacres v. Colombia* dealt with the forced eviction, displacement and housing destruction in the municipality of Ituango (La Granja and El Aro districts) in Colombia by paramilitaries aligned with the Government where the Inter-American Court in July 2006, found that the forced evictions and destruction of housing violated *Article 11 (2)* (the right to be free from arbitrary or abusive interference with the home) and *Article 21* (the right to property) of the American Convention on Human Rights.²⁷⁵ But, reading the right to housing into general property right has both conceptual and practical problems as it shall be addressed under the housing rights under the African human rights system item 'jurisprudential development of the

²⁷².Supra Note 233, Olivier De Schutter, p.90.

²⁷³.Supra Note 264, Magdalena Sepulveda... (et al), p.156

²⁷⁴.Victor Abramovich, From Massive Violations to Structural Patterns: New Approaches and Classic Tensions in the Inter-American Human Rights System, Magazine of the Due Process of Law Foundation (DPLF), (Number 16, Year 5, June 2012),p.25

²⁷⁵.Supra Note 218, Fact Sheet No. 21P.10. Most of the cases of Inter-American Commission on human rights relates to general property rights. For instance, see *Haydee A. de Marin et al.*, Case 10.770, Inter-Am. C.H.R. 293, OEA/ser. L/V/II.85, doc. 9 rev. (1994) (Annual Report 1993). Where the Commission concluded that the Government of Nicaragua had violated Articles 1, 8, 21 and 25 of the American Convention on Human Rights

human right to adequate housing'. Secondly, the protection granted under this jurisprudence is more of procedural and protection of general property right. The paper questions both organs why they failed to invoke *Article 34(k)* of the Charter of the Organization of American States which provides relatively comprehensive standard of housing rights in Americas. The reason might be attributable to membership requirement. In general, the jurisprudence of the Inter-Americas on housing rights is underdeveloped unlike that of Europeans which implicates the existing challenge of the justiciability of housing rights in the system on the one hand, and the existing one implicates indirect justiciability of housing rights by reading housing rights into general property right.

4.3. The Human Right to Adequate Housing in the European Human Rights System

4.3.1. Normative Contents of the Human Right to Adequate Housing

The Council of Europe adopted two separate treaties: the European Convention on Human Rights for civil and political rights and Social, economic and cultural rights which are enshrined in the European Social Charter ,its Additional Protocols and the Revised European Social Charter.²⁷⁶ What is unique to European human rights system is that the continuous adoption of protocols either to read new rights into the system or structural readjustment or both. This may complicate the system to identify the existing normative frameworks and institutional frameworks on the human right to adequate housing. The Inter-Americas tried to follow similar scenario though not comprehensive on the economic, social, and cultural rights. Therefore, the European system provides an illustration of how housing rights can be protected at the regional level as one of the economic, social and cultural rights through the following human rights instruments.

A. The Original European Social Charter (1961)

Article 16 of the Original European Social Charter provides that "With a view to ensuring the necessary conditions for the full development of the family ... provision of family housing..."²⁷⁷

So, provision of housing is one of the preconditions for the full development of the family as it is the place of procreation, the place where to live in peace and with human dignity.

²⁷⁶.Supra Note 109,Thomas Hammarberg, P.5

²⁷⁷.European Social Charter, Oct. 18, 1961, 529 U.N.T.S. 89, E.T.S. No. 35, *Article 16*

B. The Revised European Social Charter (1996)

The whole Original European Charter was revised and reissued as an autonomous treaty in 1996 which termed as the Revised European Social Charter (herein after RESC). But, to show the continuous endeavor of the system to address the issue of housing in the region, this thesis preferred to deal with the original charter. It provides the widest normative framework of housing rights through its *Articles 16, 19(4), 23, 30(a) and 31(1-3)*.²⁷⁸ Accordingly, *Article 16* of the same provides “With a view to ensuring the necessary conditions for the full development of the family ... provision of family housing ...” This is the replication of the original charter’s provision. In the same manner, *Article 19(4)* protects the housing rights of migrant workers and their families in that “... (4) ...in respect to the following matters...(c) accommodation.” By the same token, *Article 23* of the same protects the housing rights of ‘elderly persons’ in that “With a view to ensuring the effective exercise of the right of elderly persons ...2...by means of: a) provision of housing ... for adapting their housing.

In addition, *Article 30(a)* of the same instrument protects the housing rights of persons who live or potential risk to live under social exclusion or poverty and their families in that “With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake: a) to take measures ...,in particular,...housing ...”. Furthermore, *Article 31(1-3)* of the same provides comprehensive protection and promotion of the right to adequate housing of ‘everyone’ with sufficient standards and clear state duties that “...to take measures designed: 1. to promote access to housing of an adequate standard; 2.to prevent and reduce homelessness with a view to its gradual elimination; and 3.to make the price of housing accessible ...” The unique normative value of this article is that the protection of housing rights of ‘every one. Second, the maximum protection the instrument takes regarding housing rights of those persons without adequate resources through price control. Third, maximum concern it gives to homelessness to the extent of its elimination. In general, this instrument protects the rights of every family; migrant workers and their families; housing rights of elderly persons; and housing rights of persons under poverty and social exclusion.

²⁷⁸.Revised European Social Charter, adopted by the Members of the Council of Europe on 3 May 1996 at Strasbourg, entered into force on 1 July 1999, *Articles 16, 19(4), 23, 30(a), and 31(1-3)*

C. The Additional Protocol to the European Social Charter

Article 4(2) (a) of this document under the item 'Right of elderly persons to social protection' states: "...appropriate measures designed in particular: 2) ...by means of: a) provision of housing ..."²⁷⁹ This instrument protects the housing rights of specific group of persons usually susceptible for housing poverty. In addition, *Article 8(1)* of the European Convention under the item 'Right to respect for private and family life' provides that "Everyone has the right to respect for his private and family life, his home ..."²⁸⁰ Actually this protection and promotion is more of procedural than substantive right of housing rights. But, the protection extends to 'everyone'.

A further point is that, *Article 1* of First Protocol to the European Convention under item 'right to property' provides that "Every natural or legal person is entitled to the peaceful enjoyment of his or her possessions..."²⁸¹ The protection intended under this provision is more general as right to possession can stretch to any kind of property including land, money, share and the like. *Article 2(1)* of Protocol No. 4 to the European Convention also protects the rights of 'everyone' in that "Everyone lawfully within the territory of a State shall ... and freedom to choose his residence."²⁸² The right to choose residence is more of luxury than social, economic, and cultural rights as housing rights incorporate all these rights.

It is also possible to mention the European Union Charter of Fundamental Rights as one of the normative standards of housing rights. While it does not include a specific right to housing, *Articles 7* and *34(3)*²⁸³ have certain inferences. Accordingly, *Articles 7* declares the right to respect for home as one of the right to privacy and family life. It has separate provision on the right to property under *Article 17(1)* that protects the right to possession. In addition, *Article 34(3)* on social security and social assistance provides the respects for the right to social and

²⁷⁹.Additional Protocol to the European Social Charter, adopted on 5 October 1988, *Article 4(2) (a)*

²⁸⁰.European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) as amended by Protocol No. 11, signed by the Members of the Council of Europe on 4 November 1950 at Rome, entered into force on 3 September 1953, *Article 8(1)*

²⁸¹.First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed for the Members of the Council of Europe on 20 March 1952 at Paris, entered into force on 18 May 1954, *Article 1*

²⁸².Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed for the Members of the Council of Europe on 16 September 1963 at Strasbourg, entered into force on 2 May 1968, *Article 2(1)*

²⁸³.EU Charter of Fundamental Rights, adopted by the European Parliament, the European Council and the European Commission in Nice on 7 December 2000(2000/C 364/01), *Articles 7 and 17*

housing assistance. This latter provision especially holds true for those of disparate class of the society.

D. Constitution of the European Union (EU)

Alike the above regional human rights instruments; the draft Constitution for Europe contains similar provisions directly or indirectly protect the housing rights (*Articles 3(2), 3(12), 6(8)*).²⁸⁴ *Section 2 Article 3(2)* of the same states “Everyone has the right to respect for his or her private and family life, home ...”It provides as one of the fundamental rights under the item ‘freedoms’. In addition, it provides property right under the same section *Article 3(12)*. Furthermore, it provides housing assistance right as one of the ‘solidarity rights’ under *Article 6(8)*. This latter provision provides exhaustive list of the grounds for housing assistance which are concrete standards. In addition, alike the universal normative framework and Inter-American human rights systems, this instrument protects the housing rights of ‘everyone’

Finally, the EU Constitution provides important grand regional norms that have positive repercussions on the normative contents of the human right to adequate housing that can be inferred from *Articles 63, 64, 74, 75*.²⁸⁵ These provisions do not deserve discussion as they are beyond the scope of the thesis. In any case, this attempt implicates how far the European community highly committed to address the human rights in general and the housing rights in particular.

E. EU Regulations, Directives and Policies

EU Regulations in the 1960s and 1970s ensured that non-national workers and their dependents were entitled to the same social benefits, including access to housing, as nationals of Member

²⁸⁴. Treaty establishing a Constitution for Europe (the European Constitution or the Constitutional Treaty), 2003 O.J. (C 169) 26 (submitted to the European Council Meeting in Thessaloniki June 20, 2003). On June 18, 2004, the Inter-Governmental Committee adopted the Draft Treaty establishing the Constitution for Europe in Dublin, but it now awaits ratification by referendum and Parliament in Member States, *Articles 3(2), 3(12), 6(8)*. (In June 2004, the European Union (EU) concluded work on a constitutional treaty that contains changes to the EU’s governing institutions and decision-making processes. Commonly referred to as the “constitution,” this new treaty aims to institute internal reforms to enable a larger EU to operate effectively and prevent gridlock, but it must be ratified by all 25 member states to enter into force.)

²⁸⁵. Id, Constitution/constitutive Act of Europe, *Articles 63, 64, 74, 75*

States, on the principle of non-discrimination in freedom of movement.²⁸⁶ This implicates how far the EU community is concerned to the human right to adequate housing through specific law.

In addition, the European community exerted its effort to put the housing rights on the ground through different directives.²⁸⁷ One can grasp the maximum effort the European community exerted to protect and promote housing rights through specific laws. A further point is that, the EU different organs issue recommendations which can be used as additional guidelines for states parties.²⁸⁸ For instance, the 2009 recommendation of the Commissioner of Council of Europe, recommends states to enact specific legislation on housing rights; establish minimum standards in all areas of housing provision for accessibility, adequacy and affordability in accordance with the European standards developed by the European Committee of Social Rights and the European Court of Human Rights; enable individual justiciability of the right to housing.

Furthermore, in 2000 the Committee of Ministers adopted a Recommendation to Member States on the Right to the Satisfaction of Basic Material Needs of Persons in Situations of Extreme Hardship as a minimum: food, clothing, shelter and basic medical care which are intrinsic to the dignity of every human being.²⁸⁹ The Committee of Ministers also adopted a Recommendation in 2005 to member states on improving the housing conditions of Roma and Travelers in Europe, making 52 recommendations relating to general principles, legal frameworks, preventing and combating discrimination, protection and improvement of existing housing, frameworks for

²⁸⁶.For instance, See Regulation (EEC) No. 1612/68 of the Council of 15th October 1968 on freedom of movement for workers within the Community ,Article 9

²⁸⁷.See Race Directive, Council Directive 2000/43/EC of June 2000 on the Implementation of the Principle of Equal Treatment between Persons Irrespective of Racial or Ethnic Origin, Article 3 (1) and Gender Directive, Council Directive 2004/113/EC of 13 December 2004, Implementing the Principle of Equal Treatment between Men and Women in the Access to and Supply of Services and Goods, in Issue Paper of the Commissioner for Human Rights, Council of Europe, Housing Rights: The Duty to Ensure Housing For All, CommDH/Issue Paper(2008)1, Strasbourg, 25 April 2008(Issue Paper),p.13. Issue Papers published by the Commissioner for Human Rights are intended to highlight the human rights dimension of certain current issues, giving their main factual and legal particulars. Where appropriate, questions are raised, guidelines are set for subsequent work, and suggestions or warnings are included. The documents essentially serve a function of alert, information and stimulus to reflection or debate. They do not have the status of Recommendations or Opinions as prescribed by the Commissioner's terms of reference.

²⁸⁸.Recommendation of the Commissioner for Human Rights of council of Europe on the Implementation of the Right to Housing,CommDH(2009)5,Strasbourg, 30 June 2009,p.19

²⁸⁹.Council of Europe, Recommendation No. R (2000) 3 of the Committee of Ministers to the Member States on the Right to the Satisfaction of Basic Material Needs of Persons in Situations of Extreme Hardship. Adopted 19 January 2000,in Issue Paper of the Commissioner for Human Rights, Council of Europe, Housing Rights: The Duty to Ensure Housing For All, CommDH/Issue Paper(2008)1, Strasbourg, 25 April 2008, P.14

housing policies, financing of housing and housing standards.²⁹⁰ So, these recommendations can provide important guidelines for states parties and influence their behavior, though not binding.

The European community promotes and protects the housing rights to the extent of formulating common housing policy. Accordingly, the Parliamentary Assembly adopted “A dynamic housing policy as an element of European social cohesion,” in May 2006 which recommended that the Committee of Ministers pursue the ratification of the Revised Social Charter so as to extend recognition of the right to housing as a fundamental social right to all member countries.²⁹¹

A further point is that different organs of the EU are in a position to adopt resolutions which set out principles and guidelines on housing rights. The Parliamentary Assembly in 2006 proposed that adequate housing and shelter guaranteeing human dignity should be afforded to irregular migrants and women victims of domestic violence.²⁹² In addition, the Council of Europe Member States have adopted a number of resolutions which sets out a number of principles that should be respected and guidelines that should be taken into account when drafting and implementing housing programs for Roma.²⁹³ What is more, within the framework of the European Union, a European Parliament resolution calls on Member States to take steps in favor of de-ghettoisation (not to segregate minority group) and in order to combat discriminatory practices by providing housing and to assist individual Roma in finding alternative housing.²⁹⁴

In general, alike the universal one, the European human rights system provides strong and comprehensive normative framework with concrete definition of the human right to adequate housing of ‘everyone’. The justifications can be inferred from the act of enacting hard laws; soft laws; and adoption of different recommendations and resolutions to the extent of formulating

²⁹⁰.Recommendation Rec(2005)4,in Issue Paper of the Commissioner for Human Rights, Council of Europe, Housing Rights: The Duty to Ensure Housing For All, CommDH/Issue Paper(2008)1,Strasbourg, 25 April 2008, P.14

²⁹¹.Council of Europe Parliamentary Assembly, Doc. 10833,in Issue Paper of the Commissioner for Human Rights, Council of Europe, Housing Rights: The Duty to Ensure Housing For All, CommDH/Issue Paper(2008)1, Strasbourg, 25 April 2008, P.14

²⁹².Council of Europe Parliamentary Assembly, Resolution 1509, Human rights of irregular migrants, (2006),in Issue Paper of the Commissioner for Human Rights, Council of Europe, Housing Rights: The Duty to Ensure Housing For All, CommDH/Issue Paper(2008)1, Strasbourg, 25 April 2008, P.14

²⁹³.Council of Europe, Resolution of the Committee of Ministers to Member States on improving the housing conditions of Roma and Travellers in Europe, 23 February 2005,in European Roma Rights Centre (ERRC) v. Portugal, Complaint No. 61/2010, European Committee of Social Rights, Case document No. 1, 29 April 2010, Registered at the Secretariat on 23 April 2010 ,*Para.23*

²⁹⁴.European Parliament, Resolution P6_TA (2005)0151 on the Situation of Roma in the European Union, paragraph 19,in European Roma Rights Centre (ERRC) v. Portugal, Complaint No. 61/2010, European Committee of Social Rights, Case document No. 1, 29 April 2010, Registered at the Secretariat on 23 April 2010 , *Para. 24*

common housing regulations; directives; and policies by different organs of the system so as penetrate into the individual states' parties' legal systems and influence the behavior of individual states. It is improbable to see such strong commitment from Africans and Inter-Americas human rights system. However, the Inter-Americas are in a better position when compared to that of Africans in formulating housing rights normative frameworks.

4.3.2. The Duty of States on the Human Right to Adequate Housing in the Europeans

The important quality attributable to European normative framework is the fact that the legal duties of states parties to certain instrument are clear from the legal provision itself. For instance, the right to housing in *Article 31* of the Revised Social Charter identifies three series of duties which include: the quality of housing; the quantity of housing and measures for homeless people; and the affordability of housing in terms of cost. By the same token, *Article 8* of the ECHR, under the item 'respect for private and family life, home, and correspondence,' impose duties on states on a more positive and active role in relation to respect, protection of home, and in the prevention of evictions.

The housing rights of elderly persons are set out in *Article 23* of the Revised Social Charter dictates that States Parties to undertake to adopt or encourage appropriate measures designed to enable elderly persons to choose their life style freely by means of provision of housing. In the same manner, *Article 30* of the same regarding protection against poverty and social exclusion; impose an obligation on States Parties to promote effective access to a range of services, including housing. In general, the Revised European Social Charter has established housing obligations in relation to physically and mentally disabled persons, children and young persons, migrant workers, elderly persons and rights to social, legal and economic protection for families, including a State obligation to provide family housing as can be inferred from normative framework enumerated above.

In general, the obligations assumed by states can be summarized as obligations to refrain from interfering with liberties, opportunities or possessions; obligations to secure rights against interference by other individuals or groups; positive obligations to take appropriate legislative, budgetary and other measures²⁹⁵ that can be inferred from *Article 31* of revised ESC which

²⁹⁵.Recommendation of the Commissioner for Human Rights of council of Europe on the Implementation of the Right to Housing, CommDH(2009)5,Strasbourg, 30 June 2009, p.5 .Actually, the RESC provides general

resembles the typologies of obligations to respect, protect and fulfill housing rights, developed by the universal jurisprudence of the CESCR.

On another spectrum, even though, there is clear articulation of states duties on housing rights, it is not in strong legal sense. Such inspiration might be from the universal normative framework on economic, social and cultural rights that dictates the 'progressive realization' of the rights therein including housing rights. In this case, the whole human rights systems share some degree of resemblance except for Africans which neither define the human right to housing nor states duties on the same in its normative standards. However, the universal human rights system provided well established definition of the states duties, categorized them in terms of their degree of priority, and sequence them in terms of their level of enforceability through its intensive and continuous jurisprudences, alike European human rights system; but unlike Inter-Americas and Africans. However, most of these universal jurisprudences developed by the CESCR like its concluding observations; general comments; and statements are non-binding and most of the universal efforts remain futile.

4.3.3. Violations of the Human Right to Adequate Housing in the Europeans

In order to grasp what constitutes the violations of housing rights under European human rights system, *the a contrario* reading on the provisions of the normative frameworks and states duties discussed above has both conceptual and practical importance. According to *Hart*, within the meaning of *Article 46* of the European Convention and the European Human Rights Court's jurisprudences, assumption of responsibility entails three general obligations: the obligation to put an end to the violation, the obligation to make reparation, and, finally, the obligation to avoid similar violations.²⁹⁶

Pursuant to the jurisprudence of European Committee of Social Rights, the prohibitions on discrimination affect all three types of housing rights obligations—to respect, protect and fulfill.²⁹⁷ For instance, no one should be afforded lesser protection for their interest in occupying their home on any of the forbidden grounds. Thus, *Articles E and 31* of the RESC will be violated

undertakings under its *Article A* that each State party should select by which it shall be bound which may have negative repercussions since it may create door for escape of housing rights where it thinks it is expensive.

²⁹⁶James W. Hart, "the European Human Rights System," *Law Library Journal*, (Vol. 102:4 ,2010-31), p.554

²⁹⁷European Roma Rights Centre v Italy, European Committee of Social Rights (ECSR), Complaint No 27/2004, Decision on the merits of 7 December 2005, in Recommendation of the Commissioner for Human Rights of council of Europe on the Implementation of the Right to Housing, CommDH(2009)5, Strasbourg, 30 June 2009, p.16

when the state in evicting persons or destroying their property appears to single out an ethnic group for more severe treatment than persons generally. Similarly, *Articles 8 and 14* of the ECHR will be violated when the state fails to provide adequate remedies for unlawful destruction of their homes to members of a particular ethnic group.²⁹⁸

As indicated above, when we infer from normative contents of the housing rights, *Article 16* of the RESC requires states to ensure necessary conditions for the full development of the family through, *inter alia*, the provision of family housing and other appropriate means. It follows therefore that a State is in violation of its domestic legal framework and the RESC through its failure to secure effectively the right to adequate housing. Similarly, *Article 30* of the RESC obliges states to take measures to promote the effective access of persons and their families who live or risk living in a situation of social exclusion or poverty to, *inter alia*, through provision of housing. So, where a state fails to alleviate housing poverty, it amounts violation. Furthermore, *Article 31* of the RESC protects the right to housing which obliges states to take measures to eliminate homelessness and to promote access to housing of an adequate standard and to make such housing accessible to those without adequate means to the extent of controlling housing rent. Thus, where a state fails to tackle these problems, it is a clear violation of *Article 31* of the RESC.

So, one can safely conclude that the normative frameworks of the European human rights system clearly articulate what constitutes the violation of the human right to adequate housing unlike the universal and African human rights system. But, thanks to the jurisprudence of the CESCR which adopted general comments and concluding observation upon overseeing states parties' reports, the universal system managed to define what constitutes violations of housing rights. In addition, the expert groups, UN agencies and a plethora of other concerned organizations developed important jurisprudences on the violations of housing rights. The good instance is the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights of 1986. But, the jurisprudences developed at universal level are both non-binding and short of enforcement machinery. Likewise, the African Commission had read the violations of the housing rights into the system through its jurisprudence, even though few in numbers when compared to the fertile

²⁹⁸ *Moldovan and Others v Romania*, European Court of Human Rights (ECtHR), Judgment No. 2 of 12 July 2005, in Recommendation of the Commissioner for Human Rights of council of Europe on the Implementation of the Right to Housing, CommDH(2009)5, Strasbourg, 30 June 2009, p.16)

grounds that lead to violations and interests at stake. Secondly, the African system does not provide normative framework on the housing rights of 'everyone'. The Americas are at the middle way which neither sufficiently define violations normatively nor has adequate jurisprudences on the violations of housing rights.

4.3.4. Remedies for the Violations of Housing Rights in the Europeans

Remedy presupposes the violations of the normative contents and failure to exercise the duties undertaken by states parties under certain human rights instrument pertaining to housing rights. Accordingly, Section 2 *Article 7(1)* of the EU Constitution provides that the right to remedy as one of the right to justice which states "Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal ...". By the same token, Chapter VI, *Article 47* of the Charter of Fundamental Rights of the European Union provides the right to an effective remedy as "Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal..." The same article under its paragraph three provides that "Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice".

In addition, *Article 13* of the ECHR provides that "Everyone whose rights and freedoms as set forth in this Convention are violated, shall have an effective remedy before a national authority ..." which implicates the subsidiary nature of regional supervision mechanism. That is to mean when the domestic remedy fails, the solution is resorting to regional mechanism.

In sum, the European system makes the right to remedy 'everyone's right' alike that of Americas. Second, the remedy that 'everyone' seeks is not rudimentary one, rather should be effective. Third, the organ before which 'everyone' seeks remedy should be tribunals, except for the European convention that provides before 'national authority' which is open for interpretation. But, the general inclination of the Europeans seems towards judicial remedy like that of Americas; but, unlike the universal norm that provides both judicial and administrative ones. Unlike Europeans, the Americas provide remedies for violations of both regional and national laws of member states. The Africans remains status less in any aspects of the remedies.

4.3.5. Monitoring of the Human Right to Adequate Housing in the Europeans

It is improbable to precisely evaluate and exhaust the monitoring system of Europeans since it passed through complicated adjustments so as to accommodate emerging interests. Any ways, alike other systems it has two aspects of monitoring: monitoring organs and mechanisms.

A. Monitoring Organs

Nowadays, the European Convention provides for the most advanced system of human rights monitoring at the European supranational level.²⁹⁹ A number of human rights bodies have been established by various Council of Europe(herein after CoE) Conventions, the most prominent of which is the European Court of Human Rights and the Committee of Ministers which are relevant to monitoring housing rights. The reason behind remaining two institutions with monitoring power of housing rights is the fact that Europeans are under constant change of system adjustment. Let us see one after the other.

i. The European Court of Human Rights

The permanent European Court of Human Rights was established by Protocol No. 11 to the European Convention that came into force on 1 November 1998 which has substantially changed European human rights system.³⁰⁰ The very aim of this Protocol was to simplify the structure, shorten the length of proceedings and strengthen the judicial character of the system by making it fully compulsory and replaced the existing, part-time Court and Commission by a single, full-time Court; abolished the adjudicative role of the Committee of Ministers (See Paragraph three of preambular statements and Part II, *Article 19* of Protocol No.11 to the European Convention).

ii. The Committee of Ministers

The Committee of Ministers (herein after CM) is composed by the Foreign Minister of each Council of Europe member state which is the CoE's executive body. Until 1 November 1998, the Committee, under specific circumstances, was entitled to decide whether a violation of human rights under the ECHR had taken place. After Protocol No. 11 of the ECHR came into force, it

²⁹⁹.Supra Note 191,Manfred Nowak, p.53

³⁰⁰.Supra Note 273, Magdalena Sepulveda... (et al), p.128.The then Court was called European Court of Human Rights; whereas the present one is European Permanent Court of Human Rights. Upon a system change, according to these authors the number of cases brought before the European system is rising rapidly since the establishment of the permanent court of human rights. For instance, in 1988, 4,200 petitions were received; 18,000 were received in 1998; 35,000 were received in 2002; and in 2003, more than 39,000 applications were received. So, the system has become, to some extent, a victim of its own success according to authors.

no longer plays this role. But, in accordance with *Article 46* of the ECHR (as amended by Protocol No.11), the Committee retains the important function of supervising the execution of judgments of the European Court of human rights. That is to mean the execution of the final judgment is supervised by the Committee of Ministers of the Council of Europe. Finally, although the CM cannot enforce judgments ‘peer pressures’ play an important role in the mobilization of shame in relation to violating members.³⁰¹ This procedure adds certain added values on the monitoring mechanisms of European system and makes the system unique.

B. Monitoring Mechanisms

i. Annual Reports

Under the European regional system, the main supervisory mechanism is the reporting system established in the European Social Charter which relies mainly on the European Committee of Social Rights (herein after ECSR), that the Charter refers to as the Committee of Independent Experts.³⁰² According to *Schutter*, from 2007 States are to submit one annual report on 31 October of each year, covering in turn employment, training and equal opportunities (group 1 of the provisions of the Charter: *Articles 1, 9, 10, 15, 18, 20, 24 and 25*); health, social security and social protection (group 2: *Articles 3, 11, 12, 13, 14, 23 and 30*); labor rights (group 3: *Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29*); and children, families, migrants (group 4: *Articles 7, 8, 16, 17, 19, 27 and 31*). It follows therefore that unlike other human rights system, the European reporting mechanism is systematic and concrete for two grand reasons. First, the reporting is on annual basis than periodic. Second, the contents of the reports are clearly categorized into catalogue so that states parties cannot evade the rights. For instance, the right to housing has been put under groups two and four of the reporting schedule. These reporting procedures also make the European system unique.

This ensures that each provision of the Charter will be reported on once every four years on which the ECSR adopts conclusions on the implementation of the provisions they have accepted (*Article 24(2)* of the 1961 Charter, as revised by the Turin Protocol. These conclusions in turn are submitted to the Governmental Committee of Council of Europe for examination (*Article 27(1)*) of the same and *Articles 2-4* of the Turin Protocol in which the committee of

³⁰¹.Recommendation of the Commissioner for Human Rights of council of Europe on the Implementation of the Right to Housing, CommDH(2009)5,Strasbourg, 30 June 2009, p.126

³⁰².Supra Note 272,Olivier De Schutter,p.916

ministers can adopt resolutions based on the recommendation of governmental committee(*Article 5 of the Turin Protocol*). Alike other systems, in pursuance of Council of Europe forms for the Reports to be submitted adopted by the Committee of Ministers on January 17, 2001, the monitoring process for the State Party involves a detailed questionnaire covering housing rights, policy measures, eligibility grounds, actions to reduce homelessness, financial situations allocated to reduce homelessness, situations of forced evictions, and the existing policy pertaining to housing.³⁰³ These contents have resemblance with other systems including the universal one, but the most detail when compared with Inter-Americans and Africans.

ii. Individual and Inter-State Complaints

As it is indicated in the preceding section, the court has two jurisdictions: Advisory (*Articles 47, 48 and 49 of ECHR*),(as amended by *Article 32 of Protocol No.11*) and Contentious Jurisdiction (*Articles 33 and 34 of ECHR*) (as amended by the Protocol No.11) .It deals with individual complaints as per *Article 34 ECHR*(as amended by Protocol No.11), where any person, NGO or group of individuals claiming to be a victim of a human rights violation, under the Convention and its protocols. So, unlike other systems of human rights, the claimants are expected to show that they are direct victims of the violations. It can also entertain inter-state complaints by virtue of *Article 33 of ECHR* (as amended by Protocol No.11) on any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party. Unlike Inter-America's Court of Human Rights, the right to bring inter-State and individual complaints to the Court does not depend on any specific act of acceptance or declaration (see *Article 62 of ACHR*). The judgment of the court is final. But, within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional circumstances, request that the case be referred to a Grand Chamber consists of a panel of seventeen judges as per *Article 6(1) of Protocol 14 additional to ECHR*, in the form of appeal if the case raises a serious question affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance as *Article 43 of ECHR* (as amended by the Protocol No.11.)This also makes the European human rights system unique.

³⁰³.Padraic Kenna, the New Benchmarks for Housing Policy in Europe, *the Urban Lawyer*,(Vol. 37,No.1,winter 2005), p.108

iii .Collective Complaints

The Additional Protocol of 1995 to the European Social Charter provides for a system of Collective Complaint Procedure (herein after CCP) whereby complaints of violations of the Charter may be lodged with the ECSR (which the Original Social Charter called Committee of Independent Experts) by trade unions, employers' organizations and approved NGOs alleging the unsatisfactory application of the Charter (*Article 1* CCP).³⁰⁴ This committee in its turn shall issue report as to the fate of the complaint to the Committee of Ministers as per *Article 8* of this additional protocol and the latter adopt a resolution based on the report of the former by virtue of *Article 9* of the same. What is more, unlike other procedures, the CCP does not require that the local remedies available to the complainant organization be exhausted before a collective complaint is filed with the ECSR.³⁰⁵ Two exceptions can be deduced from this system. The ECSR, the quasi-judicial organ which the system already has dehydrated, is empowered to entertain cases under this system. Second, the committee can do so without the procedural prerequisite of exhaustion of local remedies. This is another monitoring spectrum of European human rights system which makes them unique.

4.3.6. Jurisprudential Development on the Human Right to Adequate Housing

One of the key issues in ensuring the effective enjoyment of housing rights is whether they are justiciable unlike those of civil and political rights under the system. But, there are concrete indications that housing rights can be made justiciable under the European human rights system. For instance, the European Committee of Social Rights (ECSR) has concluded that to enforce the right to housing effectively, it must be protected by sufficient legal remedies including that tenants must have the option of appealing to an independent legal body,³⁰⁶ which is to mean

³⁰⁴.Additional Protocol to the European Social Charter providing for a System of Collective Complaints (CCP), signed for the Members of the Council of Europe on 9 November 1995 at Strasbourg, entered into force on 1 July 1998, *Article 1 (a-c)*. This power emanates from *Article C* of Revised Social Charter which declared that "the implementation of the legal obligations contained in this Charter shall be submitted to the same supervision as the European Social Charter." But, some amendments have been made by the Turin Protocol. Accordingly, before the Turin Protocol comes into force, the Revised Charter will use the supervisory machinery applicable to the original Charter, and after the Turin Protocol comes into force, it will use the new supervision procedure.

³⁰⁵.Supra Note 302, Olivier De Schutter, p.740

³⁰⁶.European Committee of Social Rights (ECSR), Conclusions 2003, France, p. 224, in Recommendation of the Commissioner for Human Rights of council of Europe on the Implementation of the Right to Housing, CommDH(2009)5, Strasbourg, 30 June 2009, p.7N

judicial organ. This is conclusive evidence that Europeans prefer judicial remedy for the enforcement of housing rights.

Furthermore, the protection of the human right to housing may be achieved through the European Convention on Human Rights, as the European Court has adopted an integrated approach when dealing with different components of this right in which case, the European Court has ruled on the right to housing in more than 100 cases.³⁰⁷ Accordingly, there are several cases on the right to adequate housing. For instance, the interstate complaint case of *Cyprus v. Turkey* of 1976 the opinion of the European Commission held that the evictions of Greek Cypriots from houses, including their own homes, which are imputable to Turkey under the Convention, amount to an interference with rights guaranteed under *Article 8(1)* of ECHR.³⁰⁸ This case was ultimately considered by the European Court in 2001 and the Court reaffirmed the finding of the European Commission, and held that there has been a continuing violation of *Article 8* of the Convention by reason of the refusal to allow the return of any Greek-Cypriots displaced persons to their homes in northern Cyprus and continuing violation of *Article 1* of Protocol No. 1 that protects property right.³⁰⁹ Even though, the decision protects more of procedural rights and general property right, this paper appreciates the concern the European system in addressing housing rights through case law.

In addition, in the case of *Akdivar and others v. Turkey*, the issue of the alleged burning of houses by security forces in Southeast Turkey was considered by the European Human Rights Court and the Court held that with respect to *Article 8* of the European Convention and *Article 1* of Protocol 1 to the European Convention there can be no doubt that the deliberate burning of the applicants' homes and their contents constitutes at the same time a serious interference with the right to respect for their family lives and homes and with the peaceful enjoyment of possessions.³¹⁰ Furthermore, the case of *Mellacher and others v. Austria* dealt with the

³⁰⁷.Supra Note 300,Magdalena Sepulveda,...(et al), P.277

³⁰⁸. *Cyprus v. Turkey*, Applications 6780/74 and 6950/75, Report of the Commission, *European Human Rights Reports*, vol. 4, p. 482 (paragraphs 208-210),in Magdalena Sepulveda... (et al), Human Rights Reference Handbook, University for Peace, Ciudad Colon, Costa Rica,(3rd red 2004), (www.upeace.org), last visited July 14,2011, p.86

³⁰⁹.*Cyprus v. Turkey*, European Court of Human Rights, App. No. 00025781/94 (judgment of 10 May 2001), sections III (1) and III (4), in Magdalena Sepulveda... (et al),Human Rights Reference Handbook, University for Peace, Ciudad Colon, Costa Rica,(3rd red 2004),(www.upeace.org), last visited July 14,2011, p.86

³¹⁰.*Akdivar and Others v. Turkey*, European Court of Human Rights, Reports 1996-IV (judgment of 16 September 1996), paragraph 88, in Magdalena Sepulveda... (et al), Human Rights Reference Handbook, University for Peace, Ciudad Colon, Costa Rica, (3rdred, 2004), (www.upeace.org), last visited July 14,2011, p.87

application of *Article 1* of Protocol 1 to the European Convention on the peaceful enjoyment of possessions in the context of rent control measures. The applicant landlord argued that his rights under Protocol 1 were infringed due to the imposition of rent control measures on property he owned. However, the Court viewed the matter differently and held that the measures adopted to control rents did not fall outside the state's margin of appreciation, and although the rent reductions were striking in their amount they did not constitute a disproportionate burden.³¹¹ This paper applauds the system for its monitoring mechanism to the extent of rent controlling that benefits the disparate group of community which may not be achieved at national level in certain States.

Furthermore, in the case of *James and Others v. the United Kingdom* housing rights matters were also raised by the European Human Rights Court in the context of the right to peaceful enjoyment of one's possessions and the Court held that modern societies consider housing of the population to be a prime social need, the regulation of which cannot entirely be left to the play of market forces."³¹² What is more, in the *Case of Moldovan and Others v. Romania*, the European Human Rights Court found a violation of *Article 8* (respect for family and private life and respect for the home) and *Article 3* (prohibition on degrading treatment) of the ECHR for the failure of Romania to remedy the inadequate and substandard living conditions in which the community lived subsequent to and on account of the forced eviction.³¹³ In addition, protections available under *Article 1* of Protocol 1 to the ECHR guaranteeing the peaceful enjoyment of one's possessions have been interpreted by the European Court of human rights to include the protection of housing rights.³¹⁴

³¹¹.Mellacher and others v. Austria, European Court of Human Rights, Series A, No. 169(Judgment of 19 December 1989),in Magdalena Sepulveda... (et al), Human Rights Reference Handbook, University for Peace, Ciudad Colon, Costa Rica,(3rd red,2004), (www.upeace.org.), last visited July 14,2011, p.87

³¹².James and Others v. United Kingdom, European Court of Human Rights., series A, vol. 98(judgment of 21 February 1986), paragraph 47, in Magdalena Sepulveda... (et al), Human Rights Reference Handbook, University for Peace, Ciudad Colon, Costa Rica,(3rd red,2004), (www.upeace.org.), last visited July 14,2011 , p.88

³¹³.European Court of Human Rights, Case of Moldovan and Others v.Romania, Application Nos.41138/98 and 64320/01, Judgment No. 2 (12 July 2005), paragraphs 108 – 114,in Magdalena Sepulveda... (et al), Human Rights Reference Handbook, University for Peace, Ciudad Colon, Costa Rica,(3rd red,2004), (www.upeace.org.), last visited July 14,2011, p.73.See also Centre on Housing Rights and Evictions (COHRE) v. Croatia, Complaint No. 52/2008, Decision on the Merits 22 June 2010, The European Committee of Social Rights Having deliberated on 16 March, 27 April and 22 June 2010.

³¹⁴.Öneryildiz v. Turkey, European Court of Human Rights, Application No. 48939/99, 30 November 2004, in European Roma Rights Centre (ERRC), Inadequate Housing in Romani Communities: Standards Do Not Apply-A Report by the European Roma Rights Centre, Budapest, Hungary, (2010), (www.errc.org), last visited July 14, 2011, P.11, See also, Khamidov v. Russia, European Court of Human Rights ,Application no. 72118/01, 2 June

In collective complaint *FEANTSA v. France*, the ECSR found that France violated *Article 31* by not making sufficient progress toward eradicating substandard housing, failing to pass legislation to prevent evictions, having an insufficient supply of social housing, and having a poor social housing allocation system.³¹⁵ According to the jurisprudence of European Committee of Social Rights the very fact that the right to housing is protected by several distinct articles of the RESC is a reminder of the importance attached to it by the Parties to the RESC (*Articles 16, 30, 31 and E*).³¹⁶ It has also made it clear that the right to housing should be interpreted as a right to adequate housing which permits the exercise of many other rights— civil and political as well as economic, social and cultural and of central importance to the family.³¹⁷ But, this paper questions why the European human rights court usually fails to invoke *Article 31(1-3)* of the RESC which is comprehensive provision on housing rights. It seems that the exclusive power is vested in the ECSR to entertain cases arise under the RESC.

These are sample cases for consideration. It follows therefore that unlike other two regional systems of human rights and the universal one; the European human rights system has comprehensive and well developed jurisprudences on the human right to adequate housing using the three complaints mechanisms: individual; inter-states; and collective. This in its turn enables the system to put the normative frameworks and duties of states on the ground. However, the European jurisprudence seems adopted the mixed system of direct justiciability by applying housing rights provision directly and indirect justiciability by reading housing rights into general property right.

2008, where the court found the violation of housing rights – property rights which *Article 8* of the Convention and *Article 1* of Protocol No. 1 to the Convention as a result of the temporary occupation of the applicant's estate by the consolidated police units and the damage inflicted on the estate.

³¹⁵. Collective Complaint *FEANTSA v. France*, European Committee on Social Rights, Complaint No. 39/2006, , 19, March 2007, in Kyra IODs, "the Role of Courts in Making the Right to Housing a Reality Throughout Europe:" Lessons from France and the Netherlands, *Wisconsin International Law Journal*, (Vol. 28, No. 1, 2010), p.182

³¹⁶. Collective Complaint of European Roma Rights Centre (ERRC) v. Portugal, European Committee of Social Rights, Complaint No. 61/2010, Case document No. 1, 29 April 2010, *Para.9*

³¹⁷. European Roma Rights Centre (ERRC) v. Greece, European Committee of Social Rights, No. 15/2003, "Decision on the Merits", Case document No. 1, 29 April 2010, *Para.10*

4.4. The Human Right to Adequate Housing under African Human Rights System

4.4.1. Normative Contents of the Human Right to Adequate Housing under Africans

It difficult to read the normative standards of the human right to adequate housing from African human rights system since the grand document-the African Charter on Human and Peoples' Rights failed to define it. But, some documents touch the right in certain ways as follows.

A. African Charter on Human and Peoples' Rights

The regional African human rights system is based on the African Charter on Human and Peoples' Rights (herein after ACHPR).³¹⁸ Putting otherwise, it is the grand document upon which definition, promotion, protection, and implementation of any human right depend. Seen from its normative prospect normatively, it is an innovative human rights document which substantially departs from the narrow formulations of other regional and universal human rights instruments³¹⁹ in incorporating all generations of human rights in a single instrument. Furthermore, the advantage of African Charter is that, under its *Articles 60 and 61*, the Commission has the mandate to go beyond the charter rights to look at international standards. It follows therefore that there is hardly a right at international level that cannot be subject to protection in the African human rights system.³²⁰

When we come to the issue under consideration, the ACHPR makes no specific mention of the right to adequate housing. But, for the sake of argument, reference can be made to other provisions of the Charter within the meaning of African Commission's jurisprudence which include: *Articles 14*(right to property), *16* (right to enjoy the best attainable standard of physical and mental health)) and *18(1)* (right to family life, women, children and disabled). But, the paper counter argues whether it is sound to equate housing rights with that of general property right which shall be addressed under section 4.4.6 item 'jurisprudential development on housing rights in the Africans' of this thesis. Pertaining to the natural link among housing rights and right to health, right to life, right to family, women, children and others reference can be made to section 2.4 of chapter two of this thesis.

³¹⁸.Supra Note 44,Makau Mutua, , p.1

³¹⁹.Ibid, Makau Mutua

³²⁰.UN Human Settlement Program(UN-HABITAT),Housing Rights Legislation-Review of International and National Instruments, Report No.1,2002,(reliefweb.int/node/23799),on 10 July 2011, p.73

B. The Additional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ('African Women's Protocol')

The African Women's Protocol is the first African regional human rights treaty to provide specifically for a range of women's rights including housing rights. The significance of the African Women's Protocol is borne out by the fact that the guarantee of women's rights constitutes one of the major human rights problems within African States that can be inferred from concluding observations on the periodic reports of many African State Parties to the UN Convention on the Elimination of All Forms of Discrimination against Women (herein after CEDAW).³²¹ This similar concern has been magnified in the preamble of this Protocol that: "despite the ratification of ACHPR and other international human rights instruments by the majority of States Parties, ... women in Africa still continue to be victims of discrimination and harmful practices."³²²

Substantively, the Protocol covers a broad spectrum of women's rights, among which is the right to adequate housing. Accordingly, *Article 16* of the Protocol provides: "Women shall have the right to equal access to housing and"³²³ Unlike the universal and other regional human rights system those grant the housing rights of 'everyone', this instrument protects the housing rights of specific group of persons.

³²¹ Concluding Observations of the CEDAW Committee on Guinea, 31 July 2001, A/56/38 at Para. 97–144 ('The Committee expresses its concern about the existing gap between the *de jure* and *de facto* equality of women and men and the persistence of customary practices that continue to discriminate against women' (Para. 120)); Concluding Observations of the CEDAW Committee on Egypt, 2 February 2001, A/56/38 at Pars. 312–58 ('The Committee notes with concern that the persistence of cultural stereotypes and patriarchal attitudes impedes progress in the implementation of the Convention and the full enjoyment of their human rights' (Para. 332)); Concluding Observations of the CEDAW Committee on South Africa, 30 June 1998, A/53/38/Rev.1 at Paras. 100–37 ('The Committee ... notes with concern the continuing recognition of customary and religious laws and their adverse effects on the inheritance and land rights of women and women's rights in family relations' (par. 117)); and Concluding Observations of the CEDAW Committee on Ethiopia, 9 May 1996, A/51/38 at Paras. 134–63 ('In addition to the deep-rooted cultural obstacles, the Committee was concerned with still existing discriminatory laws at the national level, as well as persistent discrimination in the family...(and) the issue of widespread female genital mutilation as well as the incidence of violence against women and girls and the insufficiency of measures to eradicate it' (Pars. 147–8))

³²² Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, 11 July 2003, entered into force in 2005,, 11th Statement in the preamble. This Protocol came to existence by virtue of *Article 66* of the ACHPR

³²³ Id, African Women's Protocol, *Article 16*

C. The African Charter on the Rights and Welfare of the Child

This regional human right document under its *Article 10* entitled “Protection of Privacy” provides that “No child shall be subject to arbitrary or unlawful interference with his privacy, family home or correspondence...”³²⁴ But, the rationale behind this provision seems procedural protection than setting substantive norms and contents of housing rights of children in Africa. Hence, the paper contends that, this instrument lacks substantive norm pertaining to housing rights.

D. Convention Governing the Specific Aspects of Refugee Problems in Africa

This convention under its *Article 2 (5)* stipulates that “where a refugee has not received the right to reside in any country of asylum, he may be granted temporary residence in any country ...”³²⁵ However, the convention fails to convey what should be the normative contents of the residence and it is permissive provision that contradicts with the prevalent existing international norm of the right to adequate housing.

Furthermore, the AU Constitutive Act shows a serious departure from the OAU Charter according prominence to human rights in the continent.³²⁶ It provides long list of human rights under its *Article 13*, but has forgotten the already forgotten right-the human right to adequate housing. By the same token, Declaration on Democracy, Political, Economic and Corporate Governance has not touched housing rights even though the New Partnership for Africa’s Development (NEPAD) is new initiatives that address every aspect of human life in Africa. It only provides for “allocation of appropriate funds to social sector...”³²⁷ Rather; it focuses on peace and security and it does not define what constitutes a social sector. The Addis Ababa Document on Refugees and Forced Population Displacement in Africa also provides that “the international community, the United Nations, the United Nations High Commissioner for Refugees, and other relevant organizations, should support and assist host Governments ... In

³²⁴.African Charter on the Rights and Welfare of the Child adopted by the 26th Ordinary Session of the Assembly of Heads of State and Government of the OAU on 11 July 1990, Addis Ababa, Ethiopia, Reference document: OAU Doc. CAB/LEG/24.9/49 (1990), entered into force on 29 November 1999, *Article 10*

³²⁴.Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted by the Heads of African State and Government in Addis Ababa on 10 September 1969, entered into force on 20 June 1974, *Article 2(5)*

³²⁶.Vincent O. Nmeihelle, “the African Union and African Renaissance.” A New Era for Human Rights Protection in Africa? *Singapore Journal of International & Comparative Law* ,(Vol. 7 pp 412–446), 2003 P.433

³²⁷.Declaration on Democracy, Political, Economic and Corporate Governance, 6th Summit of the New Partnership for Africa’s Development (NEPAD) Heads of State and Government Implementation Committee, AHG/235 (XXXVIII), Abuja, Nigeria, (9 March 2003), *Article 20*

particular, to:(ü) provide food, water, shelter,...”³²⁸ Alike, the universal jurisprudence, this document inspires to protect the minimum core of housing rights-right to shelter.

In general, normatively the African human rights system failed to define the human right to adequate housing of ‘everyone’, unlike that of the universal one. It also lacks normative framework on housing rights in African charter on which the entire system based for definition, promotion, protection and enforcement of human rights including housing. What if the housing rights have been defined in the African Charter? Would it be peoples’ rights or ‘everyone’s’ rights? Actually, peoples’ rights can be defined into ‘everyone’s right’.

On the other hand, the attempt to inculcate the housing rights through different protocols and other instruments has failed since the African human rights commission did not make single reference in its jurisprudences of housing rights, whereas; the Americas and Europeans successfully did. That is to mean where a state is not a party to certain instrument under which the case has been initiated, the monitoring organs of the Americas and Europeans make reference to other instrument to which that particular state is a party to close the door of escaping liability. In addition, where the human right to adequate housing is not articulated in instrument which supposed to close the door for escaping, both system use their jurisprudences.

It follows therefore that, the issue of normative standard on housing rights remains unresolved under African human rights system as the African charter remained without touching, the ever evolving concern throughout the globe-housing rights; whereas the universal system provides comprehensive normative framework through hard, soft laws and other instruments on constant basis; whereas the Europeans human rights system did its best to define the housing rights normatively on constant basis to the extent of enacting common constitution, regulations directives, and policies, for collective definition, promotion, protection and enforcement of the same; whereas the Inter-Americas are in the middle to define the same which lacks continuity of taking the issue into account through different hard laws, soft laws and others like resolutions, recommendations, conferences so and so forth.

³²⁸.Addis Ababa Document on Refugees and Forced Population Displacement in Africa, Adopted by the OAU/ UNHCR Symposium on Refugees and Forced Population Displacements in Africa 8 - 10 September 1994, Addis Ababa, Ethiopia, *Recommendation 8*

4.4.2. State Duties on the Human Right to Adequate Housing in the Africans

The African Charter provides State duties under its *Article 1* to recognize the rights, duties and freedoms enshrined in the Charter and to adopt legislative or other measures to give effect to them. It also provides general duties under its *Articles 27-29*. However, it is difficult to infer state duties on the human right to adequate housing from the normative frameworks as the African Charter does not provide housing rights. Similarly, some argue that the language of duties in the Charter is controversial, even though the African Charter takes the view that individual rights cannot make sense in a social and political vacuum, unless they are coupled with duties.³²⁹ On the other hand, such stipulation of general duties might be inspired from the IAHRs, especially from the American Declaration on the Rights and Duties of Man. However, one may not quite sure whether the duty imposed on individuals are relevant for the promotion and protection of housing rights as it has been missed from the grand document of the system. Second, the primary duty of defining, protecting, promoting, and realizing the housing rights naturally vested in States parties not on individuals.

In addition, under *Article 62* ACHPR member states are obliged to submit reports every two years on legislative and other measures they adopted in order to give effect to the provisions of the African Charter. But, in the wordings of *Mutua* the Charter does not say to what body the reports are to be submitted, whether, how, and with what goal the reports should be evaluated, and what action should be taken after such evaluation.³³⁰ To alleviate this gap, the African Commission has drawn up national periodic report guidelines to help states submit reports that are clear and detailed enough that resembles the UN treaty bodies and other two regional systems. This is the first human right document in African context that provides detail information on housing rights to be inculcated in the national periodic report.³³¹ The African Charter also imposes duty on states to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the Charter, and to see to it that

³²⁹. Supra Note 318, Makau Mutua, P.8

³³⁰. Ibid, Makau Mutua

³³¹. Guidelines for National Periodic Reports under the African Charter, Information concerning the right to housing could include: the principal laws, administrative regulations and collective agreements designed to promote the right to housing, and relevant court decisions, if any; measures taken, including specific programs, subsidies and tax incentives, to expand housing construction to meet the needs of all categories of the population, particularly low-income families; information on the use of scientific and technical knowledge and of international cooperation for developing and improving housing construction, including safety measures against earthquakes, floods and other natural hazards, para.34

these freedoms and rights as well as corresponding obligations and duties are understood (*Article 25*).

But, this paper remains concerned whether these general and specific duties are relevant for the protection and promotion of housing rights in Africa. So, unlike the universal and the two regional human rights systems; the African system remained defective in defining states duties pertaining to the human right to adequate housing into the system.

4.4.3. Violations of the Human Right to Adequate Housing under Africans

As far as the violations of human rights are concerned, inference can be made from state duties illustrated above. So, where a state party fails to recognize the rights, duties and freedoms enshrined in the Charter and fails to adopt legislative or other measures; fails to report; fails to promote and ensure human rights; fails to guarantee judicial independence, it is clear violation of human rights. But, one may not quite sure whether these violations are applicable to the human right to adequate housing as the entire protection, interpretation, and promotion of human rights in Africa are based on the ACHPR which failed to define housing rights.

However, some texts express concerns that urban beautification; renewal schemes; Private companies; and dam projects are prevalent sources of violations of housing and land rights next to conflict and war especially in relation to forced evictions in African regional context.³³² So, unlike the universal and two supranational human rights systems; the African human rights system failed to articulate what constitutes violations of housing rights through its normative framework and states duties. In this respect, the universal and the Inter-Americas are more comprehensive in terms of scope since they articulate violations of both national and international laws. On the other hand, the European human rights system provides comprehensive definition through its normative framework and jurisprudences as to what constitutes violations of housing rights.

4.4.4. Remedies for the Violations of the Human Right to Adequate Housing in the Africans

Neither the Charter nor the Commission provide for enforceable remedies or a mechanism for encouraging and tracking state compliance with its decisions.³³³ But, the writer of this thesis is

³³².Joseph Schechla...(et al),Housing and Land Rights Crisis!, Violations Escalating Around the World, Habitat International Coalition(HIC),and Housing and Land Rights Network(HLRN), (2008),p.8

³³³.Supra Note 330,Makau Mutua, p.18

not quite sure whether the African human rights Commission failed to provide enforceable remedies. It is palatable evidence to see the jurisprudences of the commission especially at the end of its decision that usually provides enforceable remedies against the states parties to the case. Rather, it is sound to argue that the normative framework of the system could not provide enforceable remedy the two regional human rights systems. Basically, the Europeans are more practical as they insist on judicial remedy, whereas; the universal one provides dual remedies: judicial and administrative at national level, but quasi-judicial at universal one as the monitoring system remained with the CESC, whereas; the Americas insist on both judicial and quasi-judicial remedy at regional level, but the states are required to provide only judicial remedy at national level. Secondly, the Americas are required to provide remedy both for the violations of regional and national laws alike the universal, but; unlike the Europeans.

4.4.5. Monitoring of the Human Right to Adequate Housing under Africans

A. Monitoring Organs

The African Union is based on the Constitutive Act, which enumerates the nine principal organs of the AU. They include the Assembly of the Union, the Executive Council, the Pan-African Parliament, the Court of Justice, the Commission, the Permanent Representatives Committee, the Economic, Social and Cultural Council, the Specialized Technical Committees and the Financial Institutions.³³⁴ But, this paper prefers to discuss only two organs of the union for relevancy purpose: the African Commission on Human and Peoples' Rights and the African court of human rights.

i. The African Commission on Human and People's Rights

The African Charter is desired to be implemented by the African Commission that establishes the same under its *Article 30*. The African Charter provides the African Commission with three principle functions: examining state reports (*Article 62 and 47 of ACHPR*), considering communications alleging violations of human rights from both individuals and states (*Articles 47 and 55 ACHPR*) and interpreting provisions in the African Charter (*Article 45(3) ACHPR*). These functions have resemblance with other regional and universal human rights bodies. *Nmehielle* appreciates that, the most attractive function of the Commission, was the

³³⁴. Constitutive Act of the African Union, Adopted by the Thirty-Sixth Ordinary Session of the Assembly of Heads of State and Government 11 July, 2000 -Lome, Togo, *Article 5(1)*

assumption of jurisdiction over individual complaints under *Article 55* of the Charter even though that provision, which deals with “other communications” that the Commission is empowered to receive, does not specifically refer to individual petitions, communications, or complaints.³³⁵

However, *Claude* argues that the African Commission is a quasi-judicial body and the states’ track record of enforcing its decisions has been poor which has been hampered by some constraints among which that its recommendations and decisions are not legally binding since they cannot be published without permission and endorsement from the AU Assembly of Heads of State and Government, that they have therefore not been implemented; the African Commission’s lack of visibility on the continent to the wider public; and its inadequate resources.³³⁶ To alleviate such conceptual and practical problems, the African Commission has taken some steps which have the potential to increase its impact on states. That is to mean, pursuant to the Revised Rules of Procedure of the African Commission, the commission appointed thematic Special Rapporteurs, following the practice of the UN Commission on Human Rights or the Inter-American Commission on Human Rights.³³⁷ It has also created thematic working groups such as the Working Group on Economic, Social and Cultural Rights in Africa; the Working Group on the Death Penalty; or the Working Group on the Situation of Indigenous Peoples/Communities in Africa³³⁸ based on the same rules of procedure.

The AU Constitutive Act also tries to establish the Executive Council composed of the Ministers of Foreign Affairs which resembles the European Committee of Ministers under its *Article 10*, which empowered it to coordinate and take decisions on policies and monitor the implementation of policies formulated by the AU General Assembly in areas of common interest to the Member States as per *Article 13* of the same. But, there is no mention of housing rights.

However, unlike that of the universal human rights system, there is no indication of the promotion and protection of the housing rights, by the instrumentality of these special procedures

³³⁵.Supra Note 326,Vincent O. Nmehielle,p.423

³³⁶.Supra Note 44,Claude Cahn,Slums, p.4

³³⁷.Revised Rules of Procedure of the African Commission on Human and Peoples’ Rights, Approved by the African Commission on Human and Peoples’ Rights during its 47th ordinary session held in Banjul (The Gambia) from May 12 to 26, 2010(The Rules of Procedure were adopted by the African Commission on Human and Peoples’ Rights during its 2nd ordinary session held in Dakar (Senegal) from February 2 to 13, 1988 and it was revised during its 18th ordinary session held in Praia (Cabo-Verde) from October 2 to 11, 1995.),Rule 23

³³⁸.Supra Note 305,Olivier De Schutter, p.948

in the three regional systems. For instance, where the universal system has special rapporteur on the right to adequate housing which is effective through its mission and annual reports, the three regional human rights system have no such a special procedures specifically on housing rights.

ii. African Court of Human and Peoples' Rights

Both the European and the inter-American human rights systems give the impression that a human rights court is an essential, if an indispensable component of an effective regime for the protection of human rights.³³⁹ On the other hand, the African regional system has deficiency not only it lacks strong judicial system, but also because both the norms in the African Charter and the African Commission itself have been regarded as weak, ineffectual and its independence is under question mark which the African Human Rights Court intended to address.³⁴⁰ But, this court never entertained a single case on housing rights even though the Protocol that established the same entered into force on January 25, 2004; the paper does not see the desirability of discussing its structure. The second reason might be due to those reasons under section 'iii' below.

iii. African Court of Justice and Human Rights

Through passage of time the African Court of Justice and Human Rights/Permanent Court/ necessitated to fill the gaps in the power of African Court of Human and Peoples' Right in the one hand and African human rights commission on the other. Accordingly, in July 2004 the AU Assembly agreed to merge the two courts³⁴¹ and adopted a new protocol.³⁴² So, the merged court at that time supposed to be the principal judicial organ of AU which would have two sections: disputes on breaches of States' obligations and a human rights section.³⁴³ On the other hand, even though the new protocol and the statute of the new court is rewarding, it remained

³³⁹.Dankwa,V.Flinterman, C.,&Leckie, S. "Commentary to the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights", Human Rights Quarterly, (705-708,Vol. 20(3), 1998) ,in Laurie-Ann S. Jackson, The International Covenant on Economic, Social and Cultural Rights: A Critical Examination of the Relative Importance of Resource Constraints on Benchmarks and Benchmarking Processes in the African Context, University of Cape Town, Faculty of Law ,Department of Public Law,(October 5, 2007), p.34

³⁴⁰.Sonya Sceats, "Africa's New Human Rights Court:" Whistling in the Wind? The Royal Institute of International Affairs(2009),(www.chathamhouse.org.uk),last visited on Nov 10,2011,p.4

³⁴¹.Supra Note 336,Claude Cahn,Slums, p.60.Accordingly, the protocol establishing a merged court called African Court of Justice and Human Rights was finally adopted by the AU Assembly at the 11th AU Summit in June-July 2008, the earlier protocols are replaced by this new protocol, but the liquidation of the former court has been suspended.

³⁴².Protocol on the Statute of the African Court of Justice and Human Rights, adopted on 11 July 2003 in Maputo, Mozambique

³⁴³.Supra Note 340,Sonya Sceats, p.7

incomplete for two grand reasons.³⁴⁴ Individuals and NGOs have no direct access, except for African human rights commission, states parties, and African intergovernmental organizations which have automatic access (*Article 5* of the New Protocol). Second, since the African States failed to ratify the protocol that merged the courts, it is not functional. To this end *Sceats* contends that there is a risk that momentum and institutional learning will be lost as the interim Court winds down to make way for the permanent Court.³⁴⁵ She further worries that while all AU member states have ratified the African Charter, and are thus subject to oversight by the African Commission, to date only 24 states have ratified the Protocol establishing the interim Court, and none have ratified the merger agreement establishing the permanent Court. In the same token, some scholars repeat similar concern in that, it is not possible to predict with a given degree of certainty when the Protocol of the AU Court will enter into force³⁴⁶ that empowers the permanent court in Africa.

Hence, unlike the two regional human rights systems, the lack of strong judicial organ coupled with the ineffective activity of the African commission on socio-economic rights and the absence of normative framework of the housing rights in the grand charter put negative impetus on the definition, promotion, protection and jurisprudential development of housing rights in the African context; whereas; the universal system exerted maximum effort through the CESCR which in its turn developed continuous general comments, and concluding observations upon considering reports of states parties to ICESCR which would be important benchmarks for individual states housing policies; issuing statements to different organs of the UN to attract attention of the international community towards promotion and protection of housing rights.

B. Monitoring Mechanisms

Alike that of the universal and Inter-American human rights systems, the African human rights system has two monitoring mechanisms: reporting and complaint mechanisms.

³⁴⁴.Dan Juma, "Lost (or found) in Transition?", "The Anatomy of the New African Court of Justice and Human Rights", *Max Planck Yearbook of United Nations Law*, (Vol.13,2009,pp.267-306),p.281

³⁴⁵.Supra Note 343,Sonya Sceats, P.13

³⁴⁶.Konstantinos D.Magliveras and Gino J. Naldi, *The African Court of Justice*, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, *ZaöRV* 66 (2006),(<http://www.zaoerv.de/>),last visited 15 November 2012, P.212

i. National Periodic Reports

After considering a national periodic report, the African Commission on human and peoples' rights, communicates its comments and general observations containing recommendations to the state in question which follows the pattern of other human rights bodies.³⁴⁷ But, unlike the universal one the paper could not find a single touch of housing rights through the comments and general observations of the African commission. Most of the common concerns of comments and general observations focus on: Prohibition of torture, cruel, degrading or inhuman punishment and treatment; Issue of HIV/AIDS; domestication and ratification of international human rights instruments; prison conditions that violate international standards and African Charter; failure to promote the culture of respect of human rights; peace and security; and failure to involve more NGOs and civil society actors and other partners in the process of implementing regional and international instruments ; inadequate measures to fight poverty, and to cater corruption; abolition of corporal punishment; the continued existence of child soldiers; development issues; democracy and governance.³⁴⁸ So, one can safely conclude that the human right to adequate housing has no prime concern in African human rights monitoring system.

Furthermore, as it holds true in other regional human rights systems, a major problem that hampers the effectiveness of monitoring through reporting mechanism in Africans is the sheer failure of states to submit their reports when due; even when states do submit reports, they frequently fail to send competent representatives to present such reports; the African

³⁴⁷.Supra Note 333,Makau Mutua, p.21

³⁴⁸.Comments to Sudan's 4th and 5th Periodic Report to the African Commission on Human and Peoples' Rights) April 2012;Concluding Observations and Recommendations on the Consolidated 2nd to 10th Periodic Report of the United Republic of Tanzania, Adopted at the 43rd Ordinary Session of the African Commission on Human and Peoples' Rights held from 7 to 22 May 2008, Ezulwini, Kingdom of Swaziland; Concluding Observations on the Periodic Report on Cameroon, presented to the 39th Ordinary Session African Commission on Human and Peoples Rights, held in Banjul, The Gambia from 11-25 May, 2005.); Concluding Observations on the Consolidated Report of the Democratic Republic of Congo (DRC), at the Commission's 34th Ordinary Session held in Banjul, The Gambia from 6th to 20th November, 2003);Concluding Observations of the African Commission on Human and Peoples' Rights on the Initial Report of the Republic of Kenya, adopted at its 41st Ordinary Session held in Accra, Ghana from 16- 30 May 2007); Concluding Observations and Recommendations on the Eighth Periodic Report of the Republic of Rwanda (2002-2004), Adopted at the 42nd Ordinary Session of the ACHPR held from 14 November to 28 November 2007, Brazzaville, Republic of Congo);Concluding Observations of the African Commission on the Initial Report of the Republic of Seychelles, at 39th ordinary session in Dakar, Senegal; Concluding observations and recommendations on the First Periodic Report of the Republic of South Africa, Adopted at the 38th Ordinary Session of the ACHPR held from 21 November to 5 December 2005 in Banjul, The Gambia);Conclusive Observations on the Periodic Report of the Republic of Sudan Presented to the 35th Ordinary Session of the African Commission on Human and Peoples' Rights held in Banjul, The Gambia, from 21st May to 4th June 2004;Final Observations on the Presentation of the First Periodic Report of the Republic of Togo to the 31st Ordinary Session of ACHPR 2-16 May 2002, Pretoria, South Africa)

housing rights as the latter is wide in scope capable of holding social, economic, cultural, and developmental rights. In addition, the distinction between the human right to adequate housing and property right has literature background. Accordingly, Uhry argues that there is an essential distinction between the right to housing and right to property.³⁵⁷ According to this author, housing is both essential to survival - a fundamental right - and a commodity, which is a protection for occupiers against the threats that the absolute owner of housing can exercise

On the contrary, property right is inseparably linked with ownership right which endows the owner absolute right which in its turn places the occupier in a position of weakness in dealing with an owner who has the right to do anything.³⁵⁸ Secondly, the right to property has its own well-established definition under international law. Thirdly, from the view point of property law, the constituents of ownership of property right include: *usus, fructus*, and *abusus* (the right to use, the right to collect the fruits, and the right to destroy the same respectively). So, the third constituent part of property may not protect the occupiers of the house. Similarly, property consists of luxurious interests unlike that of housing rights in that a range of economic interests falls within the scope of the right to property, including movable or immovable property, tangible or intangible interests.³⁵⁹ On the contrary, housing rights are fundamental human rights the lack of which challenges human dignity. So, if a person fails to purchase a 'share' which is intangible economic interest in the property, the government has no legal duty to provide the same. But, where the right at stake is housing, the government has immediate duty to provide at a minimum 'shelter' for this disparate person.

By the same token, the cornerstone of the right to adequate housing, can take a variety of forms, including rental, accommodation, cooperative housing, lease, owner-occupation, emergency housing or informal settlements as discussed under section 2.4 of this thesis. So, housing rights protect both the owners and non-owners of the house as it is a place where to live in peace and dignity, including non-owners of property. But, it is not to deny that both property and housing

³⁵⁷. Marc Uhry, "The impact of European Law on the Right to Housing:" the Example of the Right to Property, the Magazine of FEANTSA-the European Federation of National Organizations with the Homeless AISBL (Autumn 2008), p.17.

³⁵⁸. Ibid, the concept of absolute right of ownership originated from 'Roman law' whereas that of derived right was from 'British law.'

³⁵⁹. Monica Carss-Frisk, The right to Property, A guide to the implementation of Article 1 of Protocol No. 1 to the European Convention on Human Rights, Human rights handbooks, No. 4, Council of Europe, Strasbourg Cedex, (2001), (http://www.coe.int/human_rights), last visited on 15 November 2012, p.10.

rights are real properties alike that of land. It follows therefore that the commission's interpretation of housing right to property right might not be sound. Rather, the commission would have used *Article 22* of the African Charter or *Article 11* of the ICESCR or/and other international legal *corpus* by invoking *Articles 60 and 61* of the African Charter on Human and Peoples' Rights. These all disparities are attributable to the deficiency of the charter since it failed to define the same. This issue is more amplified by *Olowu*, under topic 'a tale of curious and fatal omissions' in which case the working group established by the African Commission considered the enumerated and protected ESCRs in the African Charter and some un enumerated rights deemed incorporated into the African Charter which includes the rights to housing, food, water and social security.³⁶⁰ So, the absence of housing rights from the Charter in the one hand and the act of reading housing rights into the general property right on the other implicates the poor drafting process of the same.

4.5. Concluding Remarks

This chapter has discussed the six key aspects of the human right to adequate housing under the three main regional human rights systems. These key aspects include: the normative frameworks in each regional human rights system; state duties; violations; remedies; monitoring; and jurisprudential development on the human right to adequate housing. The chapter has compared and contrasted the three regional human rights systems taking into account these key aspects of the human right to adequate housing against that of the universal system which the chapter utilized as a bench mark. Accordingly, the chapter appreciated the big disparity amongst the four systems of human rights in setting standards; imposing duties on states; identifying what

³⁶⁰.Dejo Olowu, A critique of the African Commission's Draft Principles and Guidelines on Economic, Social and Cultural Rights in the African Charter, Community Law Centre (University of the Western Cape), ESR Review,(Vol. 11 No. 3 2010),o(www.communitylawcentre.org.za/clc-projects/socioeconomic-rights/esr-review-1), last visited 17 November 2012,).P.8 At its 36th Ordinary Session in Dakar, Senegal, in December 2004 (Resolution78.ACHPR/Res.73 (XXXVI) 04, 07 December 2004)..See also, Pretoria Declaration on Economic, Social and Cultural Rights in Africa 2004, Adopted in a seminar in Pretoria, south Africa in September 2004 at which representatives of the commission, 12 African states national human rights institutions and NGOs participated which was adopted by the commission at the 36th session in December 2004, *Article 5* that reads the right to property in *Article 14* of the charter relating to land and housing entails among other thing the following, Para. 8 equal access to housing and to acceptable living conditions in a healthy environment.

Chapter 5-Conclusions and Recommendations

5.1. Conclusions

The natural and legal link between the human right on the one hand and housing rights on the other are pressing issue. These human values are hinged together with the common denominator of human dignity. The international community is striving for the achievement of this common value by granting economic, social, and cultural rights in general and housing rights as a component of the human right to adequate standard of living, in particular so as to respect human dignity. On the other hand, it is difficult to find the uniform definition of the human right to adequate housing. But, by considering different valuable materials and human rights instruments, it is concluded that the human right to adequate housing is fundamental human right and is a blend of economic, social, cultural, civil, and political rights, and development and peoples' rights. That is to mean no right that cannot be defined into housing rights which promotes the current indivisibility principle of universal human rights. It is also the right of 'every one'-woman, man, child, persons with disabilities, indigenous people, refugee, internally displaced persons, victims of natural and manmade disasters. The paper found that defining housing rights into general property right is undesirable and excluded the human right to property from definition of housing rights as the latter is wider in scope capable of engulfing the former right and has independent international legal recognition.

The one who evaluates the human right to adequate housing against some key aspects of the human right to adequate housing can understand the magnitude the international community gives due consideration. This is not unique to the human right to adequate housing. These key aspects include: the normative framework for the definition, protection, promotion and realization of the right; the duties of states; constituents of violations; possible remedies in case of violations; monitoring the implementation of the right; and jurisprudential development on the human right to adequate housing. The paper concluded that there are great disparities in both in norm and practice amongst the UN; Inter-American; European; and African human rights systems in formulating, defining, identifying and realizing these key aspects of the human right to adequate housing.

The paper also concluded that the UN system is found to be in continuous endeavor in formulating comprehensive normative frameworks of the human right to adequate housing; defining states duties; defining the constituents of violations of housing rights; in setting standards of possible remedies upon the materialization of violations of the right; in establishing institutional frameworks to the extent of allowing a plethora of organizations that enables them to have watchdog capacity and to take part in the issue of housing so as to achieve effective monitoring mechanisms. In general, the universal normative framework is comprehensive and at the same time shows continuous endeavor to add certain added values on the right. Therefore, the hard; soft laws and others like labor instruments; resolutions; recommendations; guidelines; principles; conference papers; and reports adds to the contents, enable the states parties to promote, protect, fulfill the housing rights and influence the housing policies and legislative acts of the same on the one hand and implicates the maximum endeavor international community actually did to address the right, on the other.

The act of mainstreaming of the key aspects of the human right to adequate housing at universal level is mainly addressed through the jurisprudences of CESCR like its concluding observations; general comments; and statements which states parties consider as non-binding. So, the system is found defective in developing binding jurisprudences and with crippled enforcement machinery which utilizes simple means of enforcement of calling and shaming upon considering states parties' reports. Suffice to mention two factors: The absence of compliant mechanisms at the very inception of the ICESCR. Second, the lack of strong supreme judicial organ with strong executive apparatus in the system that allows everyone to complain against the violation of the human right to adequate housing which is 'everyone's' right.

Coming to the regional human rights system, the Inter-American System tried to set the normative standards to effectively inculcate the human right to adequate housing into the system. To do so the system amended its human rights instruments through different protocols. However, unlike the universal one little concern has been given in promoting the housing rights through different regional fora like declarations; conferences; resolutions; recommendations; reports; statements so and so forth. Thus, the inclinations still persists to civil and political rights. Inspired by the universal system, the Inter-American system provides the frameworks on condition that states fulfill the housing rights 'progressively', which puts negative repercussion on the enforcement of the same. So, the paper does not find such arrangement sound as most of

the Inter-American states lead economic prosperity in the one hand and the pressing demand of the housing in the region on the other. Pertaining to states duties and constituents of violations, inference can easily be made from the normative frameworks of housing rights, though not detail in content and most of the duties are general in nature and loose as most of the legal provisions are permissive.

To oversee the performance of states parties the Inter-American system has dual truck monitoring system-the Inter-American Human Rights Commission and Inter-American Human Rights Court. However, the system has both conceptual and practical problems to date. First, since the judgment of the court is going to be executed pursuant to the domestic procedure of state concerned, the paper questioned its cost effectiveness. Secondly, only states parties to the Convention and the Commission have the right to submit a case to the Court, it hinders everyone from complaining the violations of 'everyone's right' of housing; unlike that of European court of human rights which is accessible to every individual and organization. Third, the jurisprudences of both organs in the system usually tend to read the housing rights into general property right which amounts to promoting indirect justiciability of housing rights. Fourth, the jurisprudences developed on the housing rights are more of procedural protection of privacy and home than substantiating the substantive right of housing. Consequently, the Inter-American system could not develop influential jurisprudences on the human right to adequate housing despite the fact that it has dual-truck of monitoring system. The paper speculates that might be due to ideological background which was prevailing in the region during the formulation of the regional housing policies. The controlling mechanism through reporting found to be cost effective since the IAHRC has autonomous power to publish its reports and recommendations without bringing to the attention of highest organ of the region. In either case, the paper admits that there is a good start though below the expectation since the Inter-American Human Rights System is the oldest one.

Inspired by the systematic formulation of the key aspects of the human right to adequate housing, the paper concluded that the European Human Rights System is the model one. The one, who is going through the normative standards of housing rights under European human rights system, can show that comprehensive standards to the extent of formulating common constitution; regulations; directives; and housing policies. The states duties and the constituents of violations of housing rights are clear from the normative frameworks and jurisprudences. The duties of

states in relation to housing rights are detail enough that covers provision of social housing to disparate groups; elimination of homelessness; and to the extent of controlling housing rent. The monitoring mechanism through reporting to the European Committee of Social Rights (ECSR) has also unique base in which rights are cataloged in groups that states are required to report on annual basis under each group which in its turn hinders states from evading certain rights and promotes the current indivisibility principle of all human rights.

The paper also concluded that, the Europeans are the only human rights system with a single, strong, supreme and permanent adjudicatory organ entrusted with monitoring the entire compliance of human rights including housing. It totally dehydrated the quasi-judicial monitoring organs, with the exception of the execution of the judgment of the court by the highest executive organ- the Committee of Ministers (CM) which is composed of the Foreign Minister of each Council of Europe member state. So, the paper concluded that the European human rights system has comprehensive and well developed jurisprudences on the human right to adequate housing using the three complaints mechanisms: individual; inter-states; and collective.

In individual complaint case, any person, NGO or group of individuals can have access to the court, but are expected to show that they are the direct victims of the violation; unlike that of American court of human rights. It can also entertain inter-state complaints by virtue of *Article 33* of ECHR (as amended by Protocol No.11) on any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party. Unlike America's Court of Human Rights, the right to bring inter-State and individual complaints to the Court does not depend on any specific act of acceptance or declaration (see *Article 62* of ACHR). This qualification has not been applauded by many scholars, which this paper took similar concern. The Europeans also unique in accommodating changes through consecutive additional protocols those either to define new rights into the system or/and for structural readjustments. Subsequently, for these very purposes Europeans adopted fourteen protocols up until the final submission of this thesis. The Collective complaint procedure also makes the European human rights system unique in that it does not need exhaustion of local remedies to lodge a petition to the ECSR for the violations of housing rights under the RESC. Thus, one may observe two exceptions under the Collective Complaint procedure. The procedure does not demand

exhaustion of local remedies to lodge a petition. Second, the ECSR-the quasi-judicial organ, which the European system totally dehydrated, is functional here.

The African Regional Human Rights System is based on the African Charter of Human and Peoples' Rights. So, most academic scholars appreciated for its innovative way of formulating the three generations of rights in a single human right instrument. Furthermore, by virtue of its *Articles 60 and 61*, the African human rights Commission has the mandate to go beyond the charter rights to look at international standards. It follows therefore that there is hardly a right at international level that cannot be subject to protection in the African system. But, the Charter failed to mention certain important socio-economic rights like housing, the right to water and sanitation. The paper questioned the African Charter whether it was poor drafting process or deliberate so as to substitute the housing rights for the general property right. The African jurisprudences seem to adopt this latter approach which the paper challenged specially the act of reading housing rights into general property right that amounts to promoting indirect justiciability of housing rights. This also holds true for American jurisprudences, which usually read housing rights into general property rights, even though the former has independent normative definition in different instruments. It follows therefore that the human right to adequate housing is outside the purview of normative standards under African human rights system, unlike the three human rights systems.

Consequently, one cannot make inference for states duties towards housing rights and what constitutes violations of the same under African human rights system. So, the paper concluded that the African human rights system failed to define, protect, promote, and realize the housing rights of 'everyone', unlike that of the universal system and the two regional human rights systems. Thanks to the African human rights commission which developed housing rights jurisprudences, though not sufficient, successfully read the right into the African Charter through broad interpretation of some provisions of the same. But, this does not warrant the protection of ever evolving human right to adequate housing of 'everyone', as the African Commission failed to make reference to different specific protocols those protect housing rights through which the African human rights system tried to mitigate the legal *lacuna* in the grand charter. On the other spectrum of the jurisprudential development on housing rights in Africa, this paper has reservation as to the reading of housing rights into general property right. This also holds true in Inter-American human rights system

The act of reading the right to housing into general property may amount to underestimating the latter as such approach promotes indirect justiciability of housing rights. Second, housing rights is wide in scope capable of holding social, economic, cultural, and developmental rights. Third, housing is both essential to survival - a fundamental right the lack of which challenges human dignity - and a commodity, which is a protection for occupiers against the threats that the absolute owner of housing can exercise. Fourth, property right is inseparably linked with ownership right which endows the owner absolute right which in its turn places the occupier in a position of weakness in dealing with an owner who has the right to do anything. Fifth, the right to property has its own well-established definition under international law.

Sixth, from the view point of property law, the constituents of ownership of property right include: *usus*, *fructus*, and *abusus* (the right to use, the right to collect the fruits, and the right to destroy the same respectively). So, the third constituent part of property may not protect the occupiers of the house. Similarly, property consists of luxurious interests unlike that of housing rights in that a range of economic interests falls within the scope of the right to property, including movable or immovable property, tangible or intangible interests. Seventh, the cornerstone of the right to adequate housing, can take a variety of forms, including rental, accommodation, cooperative housing, lease, owner-occupation, emergency housing or informal settlements. So, housing rights protect both the owners and non-owners of the house as it is a place where to live in peace and dignity, including non-owners of property.

So, the African human rights commission could not develop influential jurisprudences on housing rights, unlike that of Europeans. But, this does not mean that the African human rights commission is totally non-functional. It managed to entertain plenty of civil and political rights, and played great roles to bring about sustainable peace; security and economic integration in the region which might contribute for the violations of housing rights.

Beyond, such conceptual and practical gaps, the attempt to monitor housing rights through judicial organ in Africa did not get ample opportunity for two grand reasons. The African Court of Human and Peoples' Rights did not entertain a single housing case since the AU members started new initiatives to merge the OAU and AU courts upon the changing of the former into the latter. Second, the states parties to the African charter failed to ratify the new protocol that merged the court. Finally, the African human rights system remained with confused judicial

organ, unlike that of Inter-American and European human rights systems. The African system also failed to provide remedies for the violations of human rights including housing rights. Furthermore, the paper questioned the effectiveness of monitoring through reporting mechanisms, as the African human rights commission has no device either independent publication or otherwise to follow up and implement its recommendations and decisions; unlike that of Inter-American and European systems. Furthermore, most of the African States fail to provide reports or overdue their reports that hinders the collective dialogue in African regional context. To this end, the following recommendations are made:

5.2. Recommendations

5.2.1. Normative Frameworks on the Human Right to Adequate Housing

Framing strong standard has both conceptual and practical importance so as to influence the entire system at stake. If it is so loose the apparatus of whole system either at universal or regional levels fails to strive for its implementation. Accordingly, in both the Inter-American and African Regional Human Rights Systems, normative wise, the human right to adequate housing is loosely defined in the former system and totally missed in the latter system.

It follows therefore that the universal system should devise mechanism of making mandatory the jurisprudences like concluding observations; and general comments of the CESCR which add certain added values to the human right to adequate housing with sufficient definition and housing standards so as to exploit their expertise. On the other hand, the Inter-American; and the African human rights systems are expected either to amend or supplement their human rights instruments through the adoption of additional Protocols to explicitly guarantee the human right to adequate housing of 'everyone' that addresses global concern of homelessness; resource constraints to access housing; access social housing for desperate group of the society; and price control through the system, taking into account the European Human Rights System as a model especially *Article 31(1-3)* of the RESC.

5.2.2. States Duties on the Human Right to Adequate Housing

The vague formulation of states duties concerning economic, social, and cultural rights in general and housing rights in particular under the universal system, have had negative repercussions on their enforcement the source of which is *Article 2* of ICESCR that dictates

states parties to exercise their duties 'progressively' to the 'available resources'. The Inter-Americas also inspired by such approach and provided the same legal scheme of arrangement. The Europeans cannot escape criticism since most of the provisions on states duties are provided with 'undertake' which implies loose, even though the contents are detail enough. The African is on difficult status as the entire provisions on states duties are totally controversial.

So, all the systems under consideration are expected to oversee their system on states duties concerning the human right to adequate housing, kick out such vague word like 'progressively' ; 'available resources'; 'utmost effort'; 'undertakes' so and so forth from their system, amend accordingly, and provide with strong legal provisions. Specially, the universal system is expected to reflect the concern of CESCER in its different jurisprudences especially its general comments on states duties in its amendment. Therefore, all the four systems are expected to inculcate the minimum core obligations of housing rights into their system without any preconditions. Putting otherwise, they are expected to formulate in such a way that all States must provide 'shelter' which is minimum to the human right to adequate housing, without any discrimination.

5.2.3. Violations of the Human Right to Adequate Housing

To define what constitutes violations of housing rights is a difficult task from the normative frameworks of the entire systems under consideration. On the other hand, the negative impact it bears on the enforcement of the housing rights cannot be underestimated. Actually, the constituents of the housing violations can be inferred from the jurisprudences of the four human rights systems that include: forced eviction; housing destruction; displacement; denying access to social housing(specific to Europe);denying loan for housing construction(specific to Europe),fail to curb corruption(specific to universal) so and so forth.

Thus, the entire systems are expected to formulate such standards in binding legal frameworks so as to ease the claim and enforcement of housing rights before the pertinent organs. Hence, all the systems are expected to define these constitutes of violations of the human right to adequate housing into their respective system through additional protocols.

5.2.4. Remedies for the Violations of Housing Rights

The normative frameworks under the universal; the Inter-American; and European human rights systems are with provisions those carry remedies of different nature in case of violations of

human rights including housing. Actually, at universal level the ICESCR does not provide remedy for the violations of rights therein, unlike its sister covenant of ICCPR. Rather, the provision of remedies is through soft laws and the jurisprudences of the CESC. The Inter-Americas has unique attribute in that the remedy should be both for the violations of regional and national laws. Coming to African one, no direct indication or inference can be made on the provision of remedy up on materialization of violations of human rights including housing.

So, in the era of globalization where the international community is developing common perception and prefers to entertain human rights cases in integrated approach, the universal system is expected to provide single judicial organ that entertains the violation of housing rights at universal level. But, at both the Inter-American and African regional human rights systems the remedy should include for the violations of international or/and regional laws that provide wide opportunity for the claimants of housing rights that would be entertained by single judicial organ.

5.2.5. Monitoring and Jurisprudential Development

There is a move at Universal level that upon the coming into force of the Optional Protocol to the ICESCR, the CESC would entertain complaints on ESCRs including housing rights. But, as indicated above the Committee's views are likely to be considered by states as non-binding and thus, states might simply ignore the Committee's recommendations. This holds true in the Inter-American system which has dual track monitoring systems. The aborted attempt in African system to monitor the human rights in Africa through quasi-judicial and judicial organs has had negative impact on the enforcement of human rights including housing. On the other hand, the Europeans are successful in entertaining plenty of housing cases through its single, full time, supreme judicial organ with single supreme executive apparatus-the Committee of Ministers.

It follows therefore that, the ultimate goal should be to establish a World Court of Human Rights at universal level on full time basis. To facilitate the activities of this World Court, the universal system should maintain the power of the CESC to oversee the reports of states parties to ICESCR and empower the same to monitor the execution of the decision of the court supposed to be established. Both the Inter-American and African human rights system are expected to establish single, supreme and full time judicial organ totally dehydrating the quasi-judicial organs taking the European system as a model. But, each two system is expected to assign the organ that can be the existing Commission on human rights that supervise the states compliance

through reports and enforce the decision of the court which supposed to be established in each system. Specially, the African human rights system is expected to empower the organ that oversees states compliance through report and execute the decision of the court, to allow full autonomy of publications of its activity report. While establishing the court in each system there should not be any type of qualification in accessing the courts.

These schemes of legal arrangements in turn enable this judicial organ to render legally binding judgments. Secondly, taking the experiences of other system enables the cross-pollination of best practices which in its turn advances the penetration and extension of common values that the international community usually celebrates.

5.2.6. Monitoring Housing Rights through Vibrant Organizations

The INGOs, NNGOs and CBOs have lion's share in advocating, protecting and promoting human rights including housing. This scenario holds true in both the Universal and European Human Rights Systems which allowed a plethora of organizations for the same purpose. American human rights system is half way. But, in the African human rights system the initiatives of these organizations are not effective specially in initiating housing cases. Most of the organizations which have done so far are northern and western origins. Hence, the African system is expected to attract vibrant INGOs, NNGOs and CBOs to promote and protect housing rights in the region since the rights holders, who are denied access to adequate housing, are the most marginalized in society who rarely have access to international institutions.

5.2.7. The Need to Come to the Right Truck

The Inter-American and African Human Rights Systems usually read housing rights into general property right through their jurisprudences. But, such act is not desirable as both rights have independent legal recognition in all the four human rights systems. It follows therefore that both human rights systems are expected to define the human right to adequate housing through independent legal provisions with adequate standards.

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