

PROGRAMMATIC GUIDANCE NOTE FOR UN-HABITAT STAFF

PROMOTION AND PROTECTION OF HUMAN RIGHTS

SUMMARY



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AUGUST, 2015

Foreword



Human rights are at the heart of the work of the United Nations. Most recently, the UN Secretary-General has re-affirmed this commitment in his Human Rights Up Front initiative, and UN-Habitat is fully engaged in and committed to its implementation.

Under my leadership, UN-Habitat has reinvigorated its thinking on how the promotion, protection and respect for human rights inextricably intertwine with its mandate on sustainable urban development. In 2013, I was met with full support from our Governing Council when I decided to elevate human rights to become a cross-cutting issue for all our substantive thematic areas, to be integrated in every policy, planning and project cycle of UN-Habitat. My appreciation goes to the UN Office for the High Commissioner of Human Rights whose support at the highest levels has been instrumental in the development of our strong human rights policy. The then UN Special Rapporteur on the Right to Adequate Housing, Ms Raquel Rolnik, also deserves special mention as do a range of human rights experts.

The necessity of increasingly engaging in sustainable urban development from a human rights perspective is evident in every city where UN-Habitat currently engages. From the drawing boards of the new master plans, over the mu-

nicipal planning offices, to the urban residents themselves, it is clear that if we want to reverse the alarming trend of urbanization equating increasing inequalities, we must strengthen the engagement of urban residents in shaping the future of our cities.

We will need to innovate and think afresh in many cities where we work and throughout the many projects in which we are engaged. The emphasis on Human Rights-Based sustainable urban development requires UN-Habitat staff to familiarize themselves with the international human rights protection system in general and those human rights most relevant to UN-Habitat in particular. I hope that this Guidance Note on the Promotion and Protection of Human Rights provides staff of UN-Habitat and its partners with exactly such an overview. I am sure it will lead to an increased awareness of the importance of the Human Rights-Based Approach to sustainable urban development, and more importantly, see it reflected in all of our work.

A handwritten signature in blue ink that reads "Joan Clos". The signature is fluid and cursive, with a long horizontal stroke at the end.

*Dr Joan Clos
Executive Director, UN-Habitat*



Every human being is entitled to freedom; to equality and dignity; to an adequate standard of living, including housing, clean water, sanitation and health-care; to self-expression, participation and development. Our inalienable human rights are valid in every context: in homes, schools, workplaces and neighbourhoods; in villages and cities; in nations and communities – throughout the multiple and concentric circles in which we live.

As more people move to cities, and the powerful drive of urbanization continues to change the face of our planet, we face demographic, environmental, economic, social, political, cultural and development-related challenges that have tremendous impact on human rights. They include inequalities in access to services that are fundamental to the public good; urban violence, including violence against women; insecurity of land tenure; and political marginalization.

Cities do not have to be places of misery or fear. Their residents have a right to voice their needs and hopes, to participate in decision-making,

and to enjoy the full range of civil, political, economic, social and cultural rights, as well as the right to development.

UN-Habitat has made a strong commitment to ensuring that our homes, neighbourhoods, and cities are places where the dignity and inalienable rights of all people are upheld. This manual is an important demonstration of how human rights principles can be incorporated into the work of ensuring sustainable and equitable urban development.

*Mr Zeid Ra'ad Al Hussein
UN High Commissioner for Human Rights*



EXECUTIVE SUMMARY

The purpose of this Programmatic Guidance Note is to provide assistance to UN-Habitat staff for the promotion and protection of human rights. The objectives of the Note are to:

1. Provide a clear description of human rights and the Human Rights-Based Approach (HRBA) and highlight the relevance to the work of UN-Habitat.
2. Define clearly the responsibilities of UN-Habitat with respect to human rights, based on the UN-Habitat mandate.
3. Provide guidance on how a HRBA should be integrated into the UN-Habitat programming.

The Guidance Note will outline the core principles of Human Rights and the Human Rights-Based Approach. It will then explain this in the context of UN-Habitat work and certain rights that are particularly applicable.

The Guidance Note contains the following substantive Chapters:

1. The Concept of Human Rights
2. Human Rights and UN-habitat
3. Human Rights of particular relevance to UN-Habitat
4. Monitoring of Human Rights
5. Background: United Nations and Human Rights
6. The Important Role of Equality in a Human Rights-Based Approach To Development

Human rights are universal legal guarantees of a civil, cultural, economic, political and social nature, protecting individuals and groups, against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity. Furthermore, human rights are inalienable, indivisible, interdependent and interrelated, reflecting specific human rights principles that can be

found in international human rights treaties, regional instruments and domestic law.

In 2003, UN agencies reached a Common Understanding of a Human Rights-Based Approach to Development Cooperation:

1. All programmes of development co-operation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other human rights instruments.
2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments should guide all development cooperation and programming in all sectors and in all phases of the programming process.
3. Development cooperation should contribute to the development of capacities of 'claim-holders' to claim their rights and of 'duty-bearers' to meet their obligations.

The Common Understanding was later endorsed by the UNDG Programme Group and many bilateral development agencies.

In addition to the three principles defined above, the Common Understanding also specified four more practical but necessary key characteristics that are specific, unique and very useful in learning how a HRBA should be used in practice. These are:

1. Assessment and analysis should identify the human rights claims of right-holders and the corresponding human rights obligations of duty-bearers as well as the immediate, underlying, and structural causes of the non-realization of rights.



2. Programmes should assess the capacity gaps of right-holders to claim their rights and the capacity gaps of duty-bearers to meet their duties. Then, strategies and programmes/projects should be developed to reduce or eliminate these capacity gaps.
3. Programmes should monitor and evaluate both outcomes and processes guided by human rights standards and principles.
4. Programming should be informed by the recommendations of international human rights bodies and mechanisms.

During the last decade, UN-Habitat has gradually broadened the conceptualization of its mandate, in departing from a focus on the right to adequate housing to addressing both the whole city as an outcome of actions, and urbanization as the process leading to this outcome. While the focus in the beginning of the 2000s was primarily on the outcome (the city), increasingly the focus has shifted to the process of urbanization, together with continued attention to the city as such. These paradigm shifts included the concepts of Inclusive Cities, “Right to the City”, Urban Prosperity and Sustainable Urban Development, and increasingly Human Rights-Based Urbanization.

Much of UN-Habitat’s work programme derives from the Habitat Agenda, adopted by the United Nations Conference on Human Settlements (Habitat II) in Istanbul 1996. The goals of the Agenda were then defined as ‘Adequate Shelter for All’, and ‘sustainable human settlements development

in an urbanizing world’. Increasingly sustainable urban development had become the key mission, which should be achieved through “expanding equitable access to land, housing, basic services and infrastructure.” With such a broad mandate, the adoption of a Human Rights-Based Approach to human settlements needs to consider a large number of recognized human rights. Thus far, emphasis has been given to the progressive realization of the right to adequate housing and the right to water and sanitation.

An important implication of a ‘human rights perspective’ is the need to give equal attention to the achievement of desirable outcomes and to the quality of process leading to these outcomes (chapter 3.2.1). The UN Common Understanding of a Human Rights-Based Approach recommends that, “Programmes should monitor and evaluate both outcomes and processes guided by human rights standards and principles” (chapter 3.2.2). However, most current development practice is usually focusing on the monitoring of desirable outcomes only, and seldom pays any significant attention to the quality of the processes. The equal attention to monitoring both outcome and process is a fundamental premise in human rights monitoring.

It is hoped that this Guidance Note on the Promotion and Protection of Human Rights provides staff of UN-Habitat and its partners with exactly such an overview in order to foster an increased awareness of why the Human Rights-Based Approach to sustainable urban development matter. Why, in the words of the Secretary-General in November 2013, with the Rights Up Front initiative, we renew our commitment to “We the peoples” of the UN Charter.



CHAPTER SUMMARIES

1: Introduction

The United Nations Charter places the realization of human rights, together with peace, justice and freedoms, at the foundation of the work of the United Nations and its agencies. The 1997 United Nations reform initiated a “rediscovery” of the United Nations Charter, which strengthened the commitment to human rights. Consequently, United Nations (UN) agencies began solidifying the process of incorporating human rights into their operations and most UN agencies have now reached a consensus on the meaning of a Human Rights-Based Approach (HRBA), the adoption of which is stipulated in the current United Nations Development Action Framework (UNDAF) Guidelines. In December 2013, the UN Secretary-General Ban Ki-Moon launched his *Rights Up Front* initiative in response to appraisals made by the UN’s Internal Review Board of past situations of grave human rights situations

UN-Habitat adopted the Human Rights-Based Approach (HRBA) in its policies and programmes in 2013 through its inclusion in current and future policy and strategic frameworks, through the elevation of human rights to become a cross-cutting issue affecting all areas of the work of the organization, and through dedicated staff to ensure that such cross-cutting inclusion remain meaningful and progressive. UN-Habitat subscribes, as a member of the United Nations Development Group (UNDG), to the Common Understanding of HRBA because experience has demonstrated that the HRBA is the way forward to deliver increasingly effective development interventions in meaningful partnership with all relevant stakeholders. The HRBA is a powerful holistic approach to design projects that are sustainable at long term and bring real changes. A better understanding of the role and added value of UN-Habitat and HRBA will also assist in solving implementation challenges particularly at field level.

2: Purpose

The purpose of this Programmatic Guidance Note is to provide assistance to UN-Habitat staff for the promotion and protection of human rights. The objectives of the Note are to:

1. Provide a clear description of human rights and the Human Rights-Based Approach (HRBA) including in particular the relevance to the work of UN-Habitat.
2. Define clearly the responsibilities of UN-Habitat with respect to human rights, based on the UN-Habitat mandate.
3. Provide guidance on how a HRBA should be integrated into the UN-Habitat programming.

3: The Concept of Human Rights

The codification of human rights in its current form is primarily the result of the creation and work of the United Nations. At the birth of the UN in San Francisco (1945) a plan was agreed upon that included the establishment of a new international organization that could secure peace, justice, freedoms and human rights. The Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948 asserted this clearly.

International Human Rights Law refers to the body of international law designed to promote and protect human rights at the national, regional and international levels. International human rights law is predominantly comprised of treaties or agreements between states and is intended to have binding legal effect between the parties in agreement.



In International Human Rights Law, four types of duties or obligations are recognized:

- *The Duty/Obligation to Respect* requires the duty-bearer to refrain from interfering directly or indirectly with the enjoyment of the right.
- *The Duty/Obligation to Protect* requires the duty-bearer to take measures that prevent third parties from interfering with the enjoyment of the right.
- *The Duty/Obligation to Fulfil* (Facilitate) requires duty-bearers to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right.
- *The Duty/Obligation to Fulfil* (Provide) requires duty-bearers to directly provide assistance or services for the realization of the right.

While civil and political rights are seen as rights that must be realized without any delay, economic, social and cultural rights may be realized ‘progressively’ depending on the availability of resources (see section 7.2.4 for a full discussion).

The Human Rights-Based Approach

Since the mid-1990s, the exploration of the linkages between human rights and development has been apparent amongst practitioners in development with the aim of augmenting a human rights perspective of development planning and programming. Following the launch of the UN Reform in 1997, all UN agencies were encouraged to operationalize a HRBA to development, ultimately resulting in an agreement amongst UN agencies about a Common Understanding of a HRBA in 2003.

A pivotal implication of a ‘human rights perspective’ is the need to give equal attention to the achievement of desirable outcomes and to the quality of process leading to these outcomes. The outcome/process construct is central to a

Human Rights-Based Approach to development, in which human rights standards and human rights principles are crucially important.

The UN Common Understanding on HRBA recommends that the human rights relationship among individuals and groups be determined in order to identify rights-holders and duty-bearers. It identifies claim-holders (and their claims or entitlements) and duty-bearers (and their correlative duties or obligations) and works towards strengthening the capacities of claim-holders to make their valid claims, and of duty-bearers to meet their duties.

It is paramount that there is an agreement amongst stakeholders regarding which of the existing problems should be addressed first. The methodology consists of six consecutive steps: (1) Causality Analysis; (2) Pattern Analysis; (3) Capacity Gap Analysis; (4) Identification of Priority Actions; (5) Assessment of selected processes; and (6) Programme Design.

4: Human Rights and UN-Habitat

The United Nations Housing Rights Programme (UNHRP) was launched in April 2002, as a joint initiative by UN-Habitat and the Office of the United Nations High Commissioner for Human Rights (OHCHR). The substantive focus of the programme is grounded in the Habitat Agenda, particularly paragraph 61, which states: “Within the overall context of an enabling approach, Governments should take appropriate action in order to promote, protect and ensure the full and progressive realization of the right to adequate housing.”

The development 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. To



Chapter Summaries *continued*

this end, UNHRP pursues documenting of standards and guidelines for housing rights as derived from the existing international legal instruments (such as the UN-Habitat/OHCHR Fact Sheet on the Right to Adequate Housing, Urban Indigenous Peoples and Migration). The UNHRP has been instrumental in contributing to the analysis of the housing rights policy, through review and documentation of national and international housing rights legislations and case law concerning housing rights.

During the last decade, UN-Habitat has gradually broadened the conceptualization of its mandate, in departing from a focus on the right to adequate housing to addressing both the whole city as an outcome of actions, and urbanization as the process leading to this outcome. While the focus in the beginning of the 2000s was primarily on the outcome (the city), increasingly the focus has shifted to the process of urbanization, together with continued attention to the city as such. These paradigm shifts included the concepts of Inclusive Cities, “Right to the City”, Urban Prosperity and Sustainable Urban Development, and increasingly Human Rights-Based Urbanization.

Currently UN-Habitat focuses on Sustainable Urbanization at All Levels of Human Settlements. There must be a change in the attitude to ‘urbanization; a shift from regarding urbanization as something undesirable to seeing urbanization as a powerful tool for development. It is clear that in the current globalizing world cities have changed from engines of growth to agents of change.

Urbanization has for a long time created increased inequalities among urban inhabitants, often even resulting in slums. A Human Rights-Based Approach to urbanization, promoting and ensuring equality and non-discrimination, participation and inclusion; and the rule of law and accountability, would prevent the exacerbating of disparities and the establishment of slums.

In this work, UN-Habitat promotes the adoption of three fundamental principles:

1. Effective political commitment to urban planning: This requires a democracy in order to ensure political legitimacy and the adherence to the rule of law.
2. Adequate governance capacity: Planned urbanization requires institutional capacity at all levels of society.
3. Adequate planning capacity: This includes the capacity to develop and manage all human settlements.

5: Human Rights of Particular Relevance to UN-Habitat

Much of UN-Habitat’s work programme derives from the Habitat Agenda, adopted by the United Nations Conference on Human Settlements (Habitat II) in Istanbul 1996. The goals of the Agenda were then defined as ‘Adequate Shelter for All’, and ‘sustainable human settlements development in an urbanizing world’. Increasingly sustainable urban development had become the key mission, which should be achieved through “expanding equitable access to land, housing, basic services and infrastructure.”

With such a broad mandate, the adoption of a Human Rights-Based Approach to human settlements needs to consider a large number of recognized human rights. Thus far, emphasis has been given to the progressive realization of the right to adequate housing and the right to water and sanitation. This Chapter presents the following human rights of importance for the work of UN Habitat:

- The Right to Adequate Housing
- The Right to Hold Property
- Land Rights
- The Right to Water and Sanitation
- The Right to Food



Chapter Summaries *continued*

- The Right to Health
- The Right to Education
- The Rights of Women
- The Rights of Children
- Youth and Human Rights
- The Rights of Migrant Workers and Members of Their Families
- The Rights of Persons with Disabilities

6: Monitoring of Human Rights

There are several reasons for identifying and using indicators. The principal reason is that an indicator “provides a way of measuring and presenting information that reveals whether standards are being met”, which means that information systems work more effectively and efficiently. Therefore, the question is what the reasons are for developing, establishing and using information systems. The main reason is to improve decisions about policies, strategies and programmes. In addition, if the indicators are generic or universal, comparisons among different countries can be made.

Thus, information is only useful if it is used for improved decision making. Hence, it is important to know who receives the information and the extent to which the receiver of the information has the capacity (e.g. authority and resources) to decide. An information management system must therefore be clearly linked or integrated with the appropriate decision making systems.

According to the OHCHR, monitoring in a human rights approach has two major objectives: (1) to help identify, on an ongoing basis, the areas on which duty-bearers may Programmatic guidance note for UN-Habitat staff need to concentrate, or to which it may need to redirect its attention if its targets for the realization of human rights are to be attained in the most expeditious and effective

manner; and (2) to enable a right-holder to hold the duty-bearer accountable for its failure to discharge its duties.

In a broader sense, the purpose for using indicators in monitoring include: (1) assessing the progressive realization of specific human rights; (2) identifying the degree to which duty-bearers have met their duties, in particular the extent to which governments have met their obligations, in order to exercise accountability; (3) identifying unintended human rights impact of laws, policies and programmes; (4) improving laws, policies, strategies and programmes; and (5) exposing issues that have been neglected or silenced.

7: United Nations and Human Rights

The International Covenant on Civil and Political Rights (ICCPRs) and the International Covenant of Economic, Social and Cultural Rights (ICESCR) were both adopted by the General Assembly in 1966 and entered into force in 1976.

The ICCPR includes right to Life; freedom from slavery, servitude, forced or compulsory labour; freedom from torture; right to a fair trial; freedom of assembly and association; freedom of thought, conscience and religion; freedom of expression; right to an effective remedy; and the right to vote and be elected .

The question of which rights exactly fall into the category of economic, social and cultural rights (ESCR) has not always received a uniform answer. Generally, the rights that are considered to belong to this group are the ones set out in the ICESCR. These include: labour rights (right to work and to just and favorable conditions at work, right to join trade unions, etc.); right to health; right to education; right to family life; right to an adequate standard of living; right to social security; right to participate in cultural



Chapter Summaries *continued*

life; right to partake of the benefits of scientific progress; minority rights, and the right to self-determination. More recently, the right to water and sanitation has been recognized as an ESCR.

The United Nations human rights machinery operates through two different types of mechanisms: (1) bodies that are based on the UN Charter (charter-based bodies); and (2) bodies that are based on UN human rights treaties (treaty-based bodies).

The charter-based bodies are created as a result of the UN Charter, of which the Human Rights Council plays a prominent role. The Universal Periodic Review and the Special Procedures are two of the most important functions of the Human Rights Council.

The treaty-based bodies include the Human Rights Treaty Bodies, composed of independent experts who monitor the implementation of the nine core human rights treaties.

The Treaty Bodies are responsible for preparing both country specific Concluding Observations and General Comments.

8: The Important Role of Equality in a Human Rights-Based Approach to Development

Equality and equity are important concepts used in describing societies; unfortunately, they are often used interchangeably, without the due recognition of their important differences. Equality has both ancient and modern philosophical origins and is now a recognized human rights principle that is defined as ‘the same’, although there are multiple accepted forms of ‘equality’. Equity is a justice concept meaning ‘fairness’, originally as a means of addressing unfairness that could result from the formal application of law.

During the last decade, the United Nations Human Settlements Programme (UN-Habitat) has gradually broadened the conceptualization of its mandate, in departing from a focus on the right to adequate housing to addressing both the whole city as an outcome of actions, and urbanization as the process leading to this outcome.

This Guidance Note on the Promotion and Protection of Human Rights aims to increase the awareness of staff of UN-Habitat and its partners as to why the Human Rights-Based Approach to sustainable urban development is of paramount importance. Why, in the words of the Secretary-General in November 2013, with the Human Rights Up Front initiative, we renew our commitment to “We the Peoples” of the UN Charter.



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