

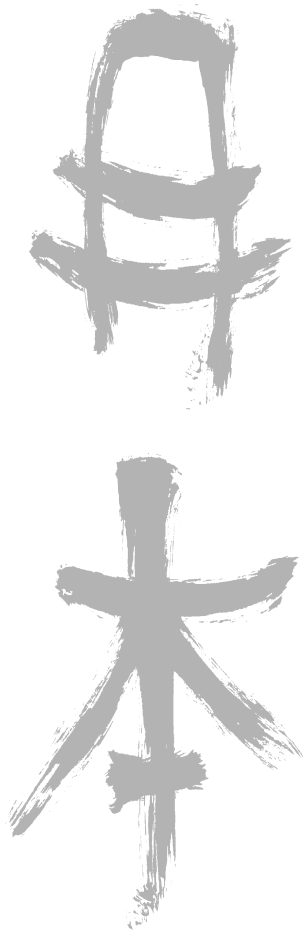
Still Waiting

Housing Rights Violations in a Land of Plenty:
The Kobe Earthquake and Beyond



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The Kobe Earthquake and Beyond



Habitat International Coalition

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(Report compiled by Scott Leckie)

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Executive Summary

Habitat International Coalition (HIC) is a Mexico City based independent housing rights advocacy group comprised of over 350 member non-governmental and community-based organizations from over 75 countries. Based upon a fact-finding mission carried out between 23 September - 4 October 1995 in and around Kobe, HIC has identified significant discrepancies between the international human rights obligations of the government of Japan and the prevailing post-earthquake housing situation in the area affected by the 17 January 1995 earthquake.

Following extensive on-site visits, meetings with all levels of government and additional research, Habitat International Coalition has concluded that the internationally recognized human right to adequate housing has not been fully respected. HIC believes that a number of steps should be taken by all levels of government in Japan to rectify this situation as expediently as possible, in order to secure the enjoyment of this right for all earthquake-affected residents, as soon as possible.

In view of the fact that the government of Japan has been legally bound to comply with the International Covenant on Economic, Social and Cultural Rights (CESCR) since 21 September 1979, Habitat International Coalition would like to emphasize the importance of securing for all persons, in particular victims of the Kobe quake, the full enjoyment of the right to adequate housing, as enshrined within article 11(1) of the CESCR, as a matter of urgency.

Indeed, HIC is also very concerned about the housing and living conditions currently facing tens of thousands of Kobe earthquake victims, a full year following the quake. Many aspects of the housing and living conditions facing those residing in waiting/evacuation centres, temporary housing sites or in parks fail to conform with basic international human rights standards on housing adequacy. In this respect, HIC is particularly concerned about the lack of security of tenure, the near absence of public participation in the housing decision-making process by citizens (in particular by earthquake victims) and the low standards found at many temporary housing sites.

With a view to improving the currently unacceptable situation, Habitat International Coalition recommends to the various governments of Japan (national, prefectural and municipal) to undertake, *inter alia*, the following measures to ensure that the international housing rights obligations held by the government of Japan are fully complied with and that all residents of Kobe and environs can enjoy their human rights:

- a Ensure the right of all earthquake victims who so request to return to the communities and neighbourhoods in which they were resident prior to the earthquake;

- b** Guarantee, as a legally enforceable right, the provision of affordable, adequate and centrally located public or other housing to all residents of temporary housing who require it;
- c** Refrain from carrying out or tolerating any forced evictions of earthquake victims now resident in temporary or unofficial housing situations;
- d** Establish a consultative body on post-earthquake reconstruction, including housing issues, comprised of representatives of civil society and government, with a view to promoting dialogue, democratic decision-making and ensuring in the most rapid manner possible, the full realization of the right to adequate housing for everyone;
- e** Undertake immediate measures aimed at improving housing and living conditions at waiting centres and temporary housing sites, in a manner reflecting citizen demands and, in the process, bringing such housing up to internationally acceptable standards;
- f** Provide increased and appropriate levels of compensation to all victims of the earthquake, in particular to the families of those killed due to post-earthquake trauma resulting from poor housing conditions and those whose houses were inadvertently demolished, both of which could have been prevented by proper governmental interventions.
- g** Give serious consideration to the direct provision of debt relief and no-interest loans to earthquake victims currently unable to pay debts or obtain loans from the private banking sector;
- h** Ensure the full enjoyment of the right to equality of treatment for all women, taking into account the special needs and rights of women. This should include ensuring that women are secure in their homes, free from domestic and other forms of violence and treated with full fairness and dignity;
- i** Prioritize the realization of the housing rights through, *inter alia*, special measures, in particular the rights of children, women, the elderly, the physically and mentally disabled, ethnic minorities, the homeless or any other marginalized group;
- j** Ensure the provision of adequate welfare assistance to all residents, notwithstanding the absence of a recognized address by residents, as a matter of human rights;
- k** Scrupulously abide by the legal obligations contained in the International Covenant on Economic, Social and Cultural Rights, in particular those relating to article 11(1), and ensure that all post-earthquake legislation, policies and plans are fully consistent with the provisions of the Covenant;
- l** Submit to the United Nations Committee on Economic, Social and Cultural Rights, within the shortest possible time-frame, the long overdue State report of the government of Japan(which is legally required under article 16-17of the International Covenant on Economic, Social and Cultural

Rights), and include within this report a detailed examination of the measures, both legislative and political taken by the relevant governments following the Kobe earthquake;

- m Give favourable consideration to judicial interpretations of articles 13, 14, 22, 25, 29(1) and 29(3) of the Constitution of Japan resulting in judgments wherein the interrelationships of these articles and the core contents of the human right to adequate housing are elucidated and incorporated into the case law; and
- n Promote, by utilizing all relevant mechanisms, the domestic enforcement and implementation of the Covenant on Economic, Social and Cultural Rights through, *inter alia*, strengthening the domestic legal applicability of the Covenant, developing public education campaigns on the rights found in this text and generally raising the legal and political stature of the Covenant to appropriate levels.

These 14 recommendations are practical, feasible and obtainable within a very short period of time should concerted efforts be made to do so by the government, notwithstanding any growth or decline in resource levels available to the government.

Should the government of Japan fail to take the necessary steps towards this end, through the full and efficient utilization of all resources available to it, HIC is very concerned that Kobe (and Hyogo Prefecture) could rapidly become the homeless capital of Japan. Likewise, if current patterns continue Kobe and environs will almost assuredly become a city where a disproportionately high number of residents will be forced to reside in conditions of increasingly severe housing deprivation.

1

Introduction



Post earthquake 'waiting centre'

"The government calls this place a waiting centre. But they don't tell us why we are still waiting after all these months. We're so unsure of things, we feel like we're waiting for nothing..."

**Kobe earthquake victim, currently resident in a 'waiting centre'
(26 September 1995)**

From 23-30 September 1995, a four-person delegation of Habitat International Coalition (HIC) undertook a fact-finding mission (FFM) in Kobe, Japan to investigate allegations of housing rights and human rights abuses related to the period following the 17 January 1995 Great Hanshin earthquake.

Established in 1976, Habitat International Coalition is an independent and non-partial international non-governmental organization, comprised of more than 350 member NGOs and community based organizations from 75 countries which works for the full realization of the human right to adequate housing for everyone, everywhere. HIC, in conjunction with its affiliates the Asian Coalition for Housing Rights and the Centre on Housing Rights and Evictions(COHRE), has carried out more than a dozen similar missions to countries including Turkey (1995), the Dominican Republic (1994), Palestine/Israel (1993), Nicaragua (1992), Panama (1992), South Korea (1988), Hong Kong (1988) and India (1988).

The four members of the mission have had extensive experience in the area of fact-finding in various countries, and each brought with them particular knowledge of issues relevant to the situation in Kobe. The delegation hailed from Canada, India, Mexico, and the Netherlands.

The basis upon which the FFM team analyzed the situation in Kobe was international human rights law, with particular emphasis placed on the human right to adequate housing. Moreover, the team - two members of which have extensive post-earthquake experience in their own countries - sought to examine how experiences in other nations previously affected by large-scale natural disasters, most notably Mexico and India, might be of use in assisting in the longer-term implementation of a post-quake reconstruction plan in a manner fully consistent with international human rights standards.

The HIC team was assisted logistically by many persons and institutions throughout its mission which ensured an efficient use of time, translations of important documents, transportation, secretarial tasks, and other matters. The team is deeply appreciative of this assistance, without which the mission could not have taken place. The FFM team would like also to express its gratitude to the many governmental officials, academics, NGOs, lawyers, community leaders and others for sharing their time, experiences, information and knowledge with us. In particular, HIC would like to thank the courageous victims of the earthquake who continue to struggle for their rights, for sharing their personal stories with us.

2

Objectives of the Fact-Finding Mission



FFM delegation in discussion with elderly quake victim housed in a temporary home of less than 10 m²

The mission attempted to develop a comprehensive picture of the pre- and post-disaster housing situation in Kobe within the limited time at its disposal by meeting with and recording evidence from a wide range of inhabitants of Kobe including earthquake survivors, residents of city parks, evacuation centres, waiting centres, temporary housing, reconstructed and repaired houses and private rental housing. An emphasis was placed on the circumstances faced by women, children, the elderly and the disabled.

The mission also held detailed discussions with officials of the Kobe city government, the Hyogo prefectural administration and senior officials of the Bureaus of Social Welfare and Construction in Tokyo responsible for the planning and execution of the rehabilitation of earthquake affected communities. The mission had the opportunity to meet with representatives of various community groups, NGOs and advocacy groups, leading lawyers, housing, earthquake, economics and social science academics and, professional and planning associations involved in preparing alternative plans for Kobe's reconstruction.

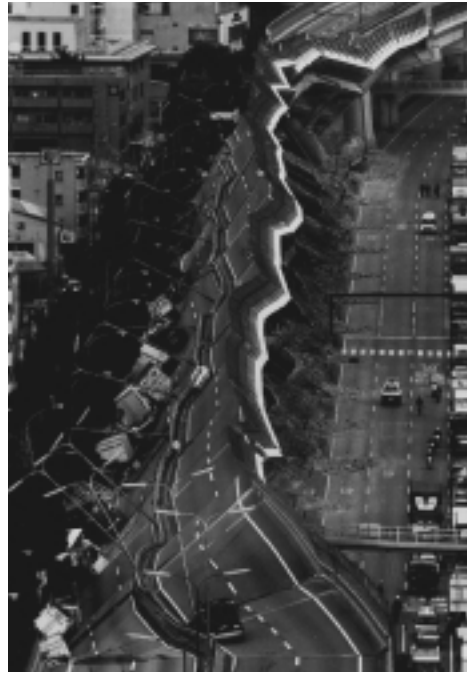
The HIC team sought to achieve six key objectives:

- 1 To assess whether the living and housing conditions of people in communities are attributable to violations of the housing rights provisions established pursuant to article 11(1) of the International Covenant on Economic, Social and Cultural Rights by governmental agencies and to suggest measures designed to promote the full realization of housing rights in Japan;

- 2 To understand the housing situation in Kobe before the disaster with specific reference to housing markets, building and planning regulations, disaster management plans and official jurisdiction and planning processes, with a view to determining whether sufficient precautions were taken by public authorities toward disaster mitigation;
- 3 To understand the rescue, relief, temporary housing and reconstruction phases of the post-disaster situation with specific emphasis on the housing and living conditions of earthquake-affected people and communities;
- 4 To understand the adequacy of the response of the government at various levels to the disaster and the innovations, limitations and constraints comprising their operation;
- 5 To determine whether legal redress and/or compensation for any human rights violations should be accorded victims by the responsible authorities; and
- 6 To provide concrete recommendations to both government and civil society to ensure that the preventable dimensions of disasters such as the 17 January 1995 earthquake are not repeated.

3

The Kobe Earthquake in Brief



Kobe, 17 January 1995

The Great Hanshin-Awaji (Kobe) Earthquake measuring 6.8 on the Richter scale (7 on the JMA scale) hit the city of Kobe and surrounding areas in Hyogo prefecture on 17 January 1995 at 05:46 local time, resulting in the largest urban earthquake to hit Japan since the Great Kanto earthquake of 1923.

The seismic intensity of the Kobe earthquake was estimated at XII on the Modified Mercalli Scale (MMS) and caused extensive damage to old houses and buildings constructed before the revision of the Japanese Building Code in 1981.

The devastating fire that followed destroyed a large section of the old-quarter in Kobe known as Nagata-ku.

Over 5,500 fatalities and more than 40,000 serious injuries were caused by the earthquake. 88% of the deaths were instantaneous, caused by building collapse which literally crushed people in their sleep.

Serious structural damage was sustained by the railways, expressways, bridges connecting the mainland to artificial islands and port infrastructure, including the power and telecommunication networks.

The conditions in the evacuation shelters, public parks and other locations where people took shelter immediately after the earthquake were exceptionally difficult.

The scale of the disaster was tremendous, resulting in over 320,000 people occupying the shelters in early 1995. The difficult living conditions persisted despite a rapid drop off in the populations in March and April 1995.

Nearly 55,000 houses collapsed and 32,000 houses were severely damaged in the city of Kobe. Traditional wooden houses with heavy tiled roofs suffered the most severe impact. Most of these collapsed. Many of the new timber houses with light roofs partially collapsed. Both of these types of houses caught fire easily, leading to the destruction of over 23,000 buildings by fire.

Old concrete buildings partially collapsed killing or trapping large numbers of people. New reinforced concrete buildings suffered less damage and combination steel and concrete buildings with effective shear walls hardly had any damage.

In total, over 500,000 persons effectively lost their place to live as a direct result of the quake; 100,209 housing units were officially classified as 'totally damaged', with 107,074 designated as 'severely damaged'.

The cost of reconstruction of buildings alone was roughly estimated at between US \$61-70 billion.

Kobe, an international port city, had a population of 1.48 million at the time of the earthquake and is the sixth largest city in Japan. The Kobe port is the largest port in the country and handled 30% of Japan's foreign trade.

4

Natural Disasters and Housing Rights



Kobe, 17 January 1995

Analyses of governmental compliance with international human rights obligations are not generally carried out in post-disaster contexts; technical reports and examinations are generally the norm in this respect, and the same situation applies to Kobe. This report, however, examines the direct relationship between the Kobe earthquake, particularly measures taken following the quake, and the enjoyment of human rights by residents of the earthquake affected zone.

While the exceptional circumstances surrounding major disasters such as the Great Hanshin Earthquake in Kobe might be seen as an inappropriate context for examining human rights issues, Habitat International Coalition believes it to be entirely fitting to examine the housing rights situation in Kobe following the disaster.

Probing human rights problems in the context of an earthquake, for instance, provides an opportunity to analyze pre-disaster governmental decisions relating to disaster preparedness, building codes and standards, overall living and housing conditions and other issues which may have led to unnecessarily high numbers of persons being killed and injured than may have been the case had different, more appropriate decisions been made.

This framework also provides possibilities for closely examining the types and results of decisions made immediately following the disaster, and those made in the medium- and longer-terms which may

have influenced, whether positively or negatively, the enjoyment of human rights, including housing rights.

Of course, disasters wherever they occur are invariably shocking and complex events, resulting in a profusion of post-disaster decisions by government, involving difficult dilemmas, solution-seeking and other problems. This report has telescoped the vast range of considerations arising in Kobe following the quake, and while examining several key technical issues, focuses primarily on the housing dimensions of the post-earthquake period. It does not, for instance, address the reconstruction of bridges and roads, issues of macro-economic public finance or geological concerns. The fact-finding mission instead focused on the effects of the dramatic earthquake on the home; the place so commonly effected during natural disasters.

The extreme housing and other hardships facing hundreds of thousands of Kobe citizens after 17 January 1995 raises many significant human rights concerns, not the least of which how earthquake victims - as citizens and as dwellers - were treated and are being currently treated by government.

To a degree, the actions of government regarding victims following disasters tend to reflect the manner by which governments generally incorporate economic, social and cultural rights considerations into overall social and economic policy and thus, the prominence these rights take in non-disaster situations.

The HIC mission inquired repeatedly with public officials into the question as to whether or not the government in making post-earthquake decisions had even known of - let alone taken fully into account - the housing rights provisions established under human rights law. The responses provided by the government unfortunately conveyed the clear impression that presently or in the past, economic, social and cultural rights have not traditionally been accorded any degree of priority by the various governments of Japan.

Other than rather rhetorical comments, virtually absent of any legal or other substance regarding housing and other socio-economic rights, the public officials with whom the HIC team spoke had only by chance dealt with relevant housing rights issues, rather than including them centrally in any post-disaster plans.

There can be no doubting that human rights considerations must, consistent with Japan's international and national legal obligations, be considered to be relevant at all times, including period following natural disasters. The nexus between human rights and pre- and post-disaster planning and decision-making by governments can serve as a useful vantage point for the position accorded human rights provisions within society at large, and indeed, indicate the seriousness with which the basic rights of citizens are taken by the State.

That many of Kobe's earthquake victims come from social and economic groups traditionally excluded from the higher echelons of political power in the country, as well as the fact that a large portion of

those victimized on 17 January 1995 and thereafter were already suffering difficulties as far as economic, social and cultural rights are concerned, provides at least some indication that more needs to be done in Japan to secure these rights, in particular, housing rights to everyone residing there.

Furthermore, examining housing rights issues within a post-disaster framework allows an analysis to emerge which squarely positions the overall governmental attitude towards housing within both the legislative sphere, as well as within the entire body politic.



Kobe, 17 January 1995

5

Housing Conditions in Kobe Before the Earthquake

(i) Housing stock & Growth

The total housing stock in Kobe prior to the earthquake was 579,259 houses. The growth rate of new houses was slow over the last few years concomitant with the sharp drop in property prices. The rate of new construction in 1994 was estimated at roughly 8,000 units based on new building permits issued. A comparable figure after the earthquake was 5,000 units over a 3 month period starting May 1995. 100,209 houses were destroyed (totally damaged), 107,074 severely damaged and 183,436 were classified as partially destroyed throughout the earthquake affected zone. In Kobe, the proportion of damage varied considerably between wards with Higashinada and Nada wards reporting 17% of total damage and Nagata reporting 18% damage.

(ii) House types

There are broadly six types of houses in Kobe city:

- 1 Traditional timber houses** (usually pre-1950) with heavy tile roofs on timber frame post-and-beam walls with limited partitions, sliding paper walls and boulder foundations, built to resist typhoons and medium intensity earthquakes and not constructed to meet any building standards.
- 2 New timber framed houses** with light tile roofs, braced timber frames, timber partitions and concrete foundations that were built after the Fukui earthquake and the 1st Japan Building Code when the lateral seismic coefficient of 0.2 was introduced.

- 3 **Old reinforced concrete** buildings constructed before the 3rd (revised) Japanese building code was brought into force in 1980.
- 4 **New Reinforced Concrete Buildings** constructed after 1980 in accordance with the new codal provisions following the Tokachi-Okii & Miyagi-Ken-Okii earthquakes.
- 5 **Steel Frame Buildings** with steel frames and masonry or glass cladding.
- 6 **Combination Structures** with steel and reinforced concrete, especially concrete shear walls.

(iii) Tenure conditions and Public Housing

Roughly 50% of houses in Kobe, are owned with the rest found in the rental sector. The average figure for Japan was 61% owner occupied housing in 1988; 10% public rental housing; and the remainder in the private rental sector.

(iv) Housing Markets

The housing market in Kobe appears to be driven by property prices determined by commercial office development. Since the "privatisation" policy in the housing sector of Japan, property prices boomed until the early 1990s as large corporations with huge cash surpluses invested in real estate, pushing up prices across the country.

The proportion of public housing for the economically disadvantaged remained roughly constant at less than 10% of total stock, thereby having little impact on overall supply-demand dynamics. In Kobe, roughly 50% of the housing stock was largely outside of the formal housing market - this traditional community housing was located in the most densely populated areas, where close community ties and long-term relationships between aging landowners and tenants kept prices down.

The destruction of more than half this stock, which housed a large rent paying population has altered the structure of demand for housing in Kobe dramatically, with a resultant large increase in the demand for public housing, as the life-savings of many people have been destroyed. Current incomes neither permit them to buy new houses or even to rent them at current market rates. If the promised 82,000 new public housing units are not built in the next 3 years - large scale homelessness or occupation of partially damaged and therefore unsafe houses will undoubtedly result.



Temporary housing site, Kobe

6

Current Housing and Living Conditions

No Place to Go

The HIC mission visited various emergency housing sites where victims of the earthquake continue to reside nearly a year after the disaster. These sites can be categorized as follows:

- a** Unrecognized sites and dwellings: tents and privately rented pre-fabricated houses on public or city property
- b** Waiting Centres
- c** Temporary Housing

Quake victims are now living in unstable and inadequate housing for the following reasons:

- a** Those living in officially unrecognized dwellings cannot and will not move away from their communities. They recognize that to do so will lead to social isolation or dislocation and hence will gravely affect their mental psyche and morale, their financial stability and their social support networks.

The two groups most affected by such moves are children and the elderly. Elderly people rely on their communities for emotional support and also for practical assistance with accessing

household supplies such as food and in getting to the hospital for medical examinations and to retrieve medicine. It is very difficult for children to be uprooted from their communities, away from their friends and schools.

- b** Many residents cannot rebuild on their own property as the government will not grant them the necessary building permits on the basis that such reconstruction conflicts with the government's own redevelopment plan.
- c** Residents over 70 years of age are not allowed to take out loans from the bank to rebuild houses.
- d** Residents cannot afford to rent apartments in their original neighbourhoods as rents are now up to four times as expensive as before the earthquake.
- e** Some landlords now require security deposits of up to 100,000 Yen for rental units. With barely enough money to provide food for themselves, the possibility of returning to their former neighbourhoods is an illusive dream.

Problems with Security of Tenure

Although day to day living conditions vary between housing types, all of the residents of these temporary forms of housing share an overriding sense of instability derived primarily from the fact that they do not possess security of tenure. This means, among other things, that they can be evicted in accordance with due process, at any time.

On 20 August 1995 the government declared those residing in tents and privately rented prefabricated homes on city property in parks and playgrounds as "squatters".

The government has initiated a series of actions to pressure residents to leave what public officials declare to be "illegal" sites. HIC was informed that these tactics include:

- a** questioning the political affiliations of community leaders;
- b** posting signs on "illegally" constructed houses and tents indicating that they are on public property;
- c** luring residents to waiting centres on false pretenses by glorifying the living conditions in these centres; and
- d** threatening that victims of the earthquake will not be able to secure housing with the assistance of the government unless they first live in government recognized housing such as waiting centres or temporary housing.

Obviously, for those living on "illegal" sites it is unclear as to how long they will be able to remain on these 'unofficial' sites. Similarly the future of those in waiting centres is tenuous as the city government is anxious for 'normalacy' and hence expects community centres and playgrounds to return to their intended use. Although those living in temporary housing have been told by the city that they

can remain in such housing for two years, their housing future beyond this time is completely unknown.

To date, no government official nor decision has stated clearly and unequivocally that those living in waiting centres or temporary housing will receive public housing despite the fact that virtually all of the residents in waiting centres and a majority of those in temporary housing are in need of public housing or government subsidized housing.

Moreover, the government has not guaranteed that the residents of Kobe now living in parks, waiting centres, or temporary housing will be able to return to their original neighbourhoods and communities, despite the fact that this is clearly the very vocal, frequent and well-argued demand of these residents. For these people forced eviction and homelessness loom as real possibilities in the not too distant future, should the government maintain its current attitudes.

Conditions in Officially Unrecognized Sites

"Temporary housing should be a place of peace and comfort where we can save our energy to begin to rebuild our lives"

Homanchi Park Dweller

As of early October approximately 2700 people were living in tents or privately rented pre-fabricated portable units on public property - either parks or playgrounds - located in the Kobe city centre. Although living conditions obviously vary between tents and the prefabricated units, neither form of housing truly corresponds with the international legal housing rights of the residents.

(i) Tents on Public Lands

Those living in tents have been denied some of the most basic elements of adequate housing, including electricity and waterproof spray necessary to protect and preserve essentials such as food supplies. Although residents were eventually provided with the waterproof spray, the government continues to withhold electricity on the basis that these sites are 'illegal' and to pressure these dwellers to move to waiting centres or to accept temporary housing most often located a far distance from their own communities.

Beyond this, the government has pressured residents by terminating the provision of food supplies on 20 August 1995, posting threatening signs on tents and 'illegally' constructed units and threatening that these people will not be able to secure temporary housing at all if they do not proceed to Waiting Centres. Additionally, the city government refuses to recognize housing sites that conflict with the redevelopment plan which includes widening and extending roads so that they will pass directly through where people are currently housed or where people once owned property and intend to rebuild.

The residents counter that "the plan is only a plan", it does not have the force of law and thus can be

changed so that it coincides with and reflects the housing needs and rights of the citizens of Kobe and the victims of the earthquake. These tent dwellers maintain that they will continue to resist the



Kobe quake victims solving their housing problems on their own

government's efforts to force them to move into temporary housing located far away from their current communities.

(ii) Privately Rented Temporary Housing on Public Lands

Rather than moving to the government provided temporary houses in the outlying areas of Kobe, many citizens have chosen to defy the government plan in favour of residing closer to their own communities. As one resident in Honmanchi Park stated, "It is simply wrong that people should be moved far away". All of the residents in Honmanchi Park lived within 600 metres of the Park prior to the earthquake.

While the living conditions in privately rented prefabricated houses is necessarily better than in tents, the rights of these residents are also not being met.

There are three essential problems facing these dwellers:

- 1 The most pressing problem concerns the lack of legal security of tenure. Understanding that affordable housing in their own communities may not be available for at least five years, these dwellers are particularly vulnerable without this protection;

- 2 These victims of the earthquake believe firmly that governments at all levels are fundamentally ignoring their rights. They have attempted to negotiate with the municipal government and to participate in the redevelopment plan of Kobe, however, they have been excluded from the process because they have refused to relegate themselves to the government's plan and move to temporary housing. The Municipal government has now posted a sign on its 4th floor office door at City Hall indicating that it will not speak with members of the Coalition of Victims of the earthquake; and
- 3 The government refuses to provide welfare assistance to persons without an officially recognized address. In other words, all of those residing 'illegally' in parks and playgrounds are ineligible for public assistance. The City government has responded to this by stating that "policy changes cannot be made for individual cases".

Conditions in Waiting and Evacuation Centres

As of October 1995, approximately 3000 persons were living in waiting and evacuation centres in Kobe. These persons constitute some of the poorest citizens in the city. Prior to the Great Earthquake most of those currently housed in waiting centres were living in public housing. They are now relegated to living in community centres and gymnasiums having been unsuccessful in securing temporary housing through the lottery system, or refusing to move into temporary housing that is distant from their original homes.

The Waiting Centres mark some of the worst living conditions encountered on this fact finding mission. At the Suma Ward Community Centre, for example, where 23 families are currently living, the HIC delegation observed the following conditions:

- a As in the other post-earthquake housing structures discussed in this report, the residents lack security of tenure;
- b The floors of the gymnasiums where the people live is often protected with plastic, intensifying the already humid atmosphere;
- c Each family is allotted only a very small area to live, eg. between 10-20sq m;
- d The residents are often not permitted to use the convenient kitchen facilities located close to their living space. To ensure their non-use, both the hot water and gas where the residents live has been cut off. To cook or do laundry the residents are required to descend four flights of stairs and to walk outside to use the facilities provided by the city government. This is particularly onerous for the elderly, the disabled and for women who may be pregnant. As a result of this unnecessary inconvenience many of the residents have taken to preparing meals in their living spaces using hot plates and rice cookers. This seriously compromises the quality of food being prepared.

- e The residents complained of a lack of privacy on two fronts. First, because the partitions between 'households' are only 80 cm high, in particular women were ill at ease when having to change their clothes. The municipal government responded to this complaint by establishing changing areas for women, however, this too lacks the privacy that a proper housing structure would afford.

Second, the residents complained that agents of the municipal government have walked around the living areas in the Waiting Centres very early in the morning. The residents feel that they are being watched by these officials and that this is a means of pressuring them to leave.

- f The stressful and at times insufferable living conditions in Waiting Centres is exacerbated by the discriminatory attitudes that these residents have encountered. Waiting Centre residents have reported incidents of discrimination by colleagues and co-workers who call them "beggars" for continuing to require government assistance and for not living in proper housing.

The waiting centre residents made two key recommendations to the HIC team as to how to solve the overall housing crisis in the city:

- 1 The government should impose rent controls on landlords and property owners to ensure that affordable housing is available to all of those who cannot meet the current exorbitant rental prices; and
- 2 The City should be rent or lease land from property owners (on at least a short term basis), building apartments on the land, and then providing subsidized units for those who cannot afford steep rents.

One resident made the following simple request, "We just want to be treated like human beings with a little dignity and respect".

Conditions and Location of Temporary Housing

The government has provided approximately 48,000 temporary housing units in the Hyogo region. These settlements resemble well-constructed refugee camps. As the HIC team walked through one such settlement, one observer remarked that it reminded him of the Prisoner of War camps in the film 'The Great Escape'.

Although some of these units are in Kobe city centre, a majority of the temporary housing settlements, however, are located well outside of the city centre in the far northern and western parts of the city. There is currently a 10% vacancy rate in temporary housing, likely a result of the citizens' resistance to moving away from their communities to such an unclear future.

One of the overall problems with temporary housing concerns allocation procedures. In determining who would receive temporary housing the government naturally and rightfully prioritized access for

elderly and disabled persons to ensure that these people - perhaps the most disadvantaged in Kobe - had shelter. On the one hand this is commendable, on the other, however, it has proven problematic.

First, in creating entire communities of elderly and disabled persons, the government has simultaneously created helpless communities. The integration of elderly and handicapped with the larger society would have ensured a social support network for these peoples. As it stands, however, the elderly and handicapped are completely reliant on the good will of social workers, nurses and volunteers to go to the hospital, to buy food, and medicine or to visit friends or family. The government has taken away any independence these people might have had otherwise.

The complaint that all of the residents we spoke with in various temporary housing complexes registered was the dislocation they felt from their communities as a result of having to move so far away. The effects of such removals can be summarized as follows:

- People rely on their communities for many things: social and emotion support, family ties, friendship, employment, services, school, etc. A person who is forced to leave that community therefore suffers multiple losses: friends, kinship ties, work, social support network. In turn, this may lead to feelings of isolation, depression or despair and may even lead to increased alcohol consumption. In Kobe, 25 suicides have been reported since the earthquake that have been directly related to loneliness and isolation suffered by those living in temporary housing, removed from their communities.
- People derive a sense of self from the people and environment that surround them. Without this, a person may feel lost, his or her identity becomes unknown. They are a nobody or less than a nobody.

Specific Inadequacies

Residents currently living in temporary housing had a litany of complaints beyond being dislocated from their communities. A comprehensive summary is provided:

- a** Residents do not have security of tenure, beyond the two year limit granted (but not guaranteed in law) by city officials;
- b** Temporary houses are located quite far from essential services such as hospitals, schools and from metropolitan centres. In turn, residents without access to a car are reliant on public transportation. As it stands, buses run infrequently and cease operation early in the evening, limiting freedom;
- c** The residents lack full rights to participation and control over their housing. Dwellers of temporary housing surveyed for this report indicated that they were precluded from participating in the housing process since the earthquake. Residents have been told where to live and have not been consulted about their housing needs and wishes;

- d** For those with cars there is limited parking space available;
- e** Garbage disposal is located at great distance from the houses of the elderly and disabled;
- f** The gravel roads create difficulties for wheelchairs and are dangerous for children or the elderly who may fall;
- g** Ramps provided for the elderly and disabled are of poor quality and will not be able to resist everyday wear and tear;
- h** Residents feel that they are not receiving detailed and current information regarding their housing situation;
- i** The houses are often extremely small (some are only 9sq. m.). Units are allocated per household rather than based on the number of people in a family. In turn, a family of five may have to live in the same size unit as an individual;
- j** Many of the units have raised toilets and showers that are difficult for handicapped persons to use and could cause an elderly person to fall and badly hurt themselves. In several units for the disabled the location and angle of handrails is incorrect;
- k** Houses have not been built to last longer than two years and yet it appears as if many of the people in temporary housing will need to reside in these houses for at least five years;
- l** There is no place for children to play;
- m** The units have thin walls resulting in noise problems and lack of privacy;
- n** The foundations of many of the houses are wood. This will easily rot in the damp weather. Additionally, bamboo shoots and mushrooms grow wildly underneath these houses. Also, snakes and insects have become an increasing problem; and
- o** Similar to residents in all types of post-earthquake housing in Kobe, those living in temporary housing sites complained that they were excluded by the government from participating in the planning of their current housing and that they continue to be excluded from the government's decisions regarding housing. Their opinions and ideas with respect to their own housing have largely been ignored. Residents stated that they were pressured to go to temporary housing, having been told that their final chance to secure housing was in April 1995.

Conditions for Women in Housing

Because women in Japanese society spend more time in the house than any other group or member of society, it is important to understand and underscore their experiences of housing since the earthquake. Our findings are laid out below.

- a** The inconvenient location of kitchen and laundry facilities (often several flights of stairs down from living spaces) in Waiting Centres makes everyday tasks arduous for all women and is particularly dangerous for elderly and pregnant women;
- b** The lack of privacy in the temporary houses (thin walls) and in Waiting Centres makes changing one's clothes embarrassing. Even the "change rooms" provided by the government do not allow women to feel much less exposed or sheltered from the public when undressing;
- c** The lack of privacy also makes it difficult to express emotions;
- d** Women are traditionally the emotional centres of the family. That is, they comfort children and husbands ensuring their mental and physical health. During and after an extremely stressful, life threatening event such as the Giant Earthquake the emotional demands on women are enormous. If women are not also cared for they will suffer irreparable mental strife and suffering, as well as losing what little independence they have in this country.

Women, Violence and Housing

- a** After the earthquake a number of individuals and families who were left homeless were forced to seek shelter with family or friends. Overcrowded living conditions can heighten stress, anxiety and pressure. This coupled with high levels of unemployment as is being experienced since the earthquake can lead to an increase in alcohol consumption. This can also lead to an increase in violence against women in the home.
- b** Since the earthquake there have been a number of reports of domestic violence. As a result of the earthquake, many houses were partly destroyed and many sites were cleared of rubble and now resemble empty parking lots sandwiched between houses that withstood the quake. Deserted, dark and often concealed, these are prime sites for violent acts against women. To date at least two such incidents have been reported. One can assume that many more similar incidents have actually occurred, however, women are reluctant to report such incidents - this is a global phenomenon.

The national government has said that they have sent patrols around neighbourhoods - acknowledging that violence against women is a problem. Is this enough? Obviously not; given that incidents of rape and sexual assault have been reported to have occurred subsequent to the earthquake. The government has made no other gestures that indicate that it intends to further assist women who are clearly in danger of being sexually assaulted and raped.

7



Still waiting for a real home

Human Rights and the Kobe Earthquake: Main Findings

Following extensive site-visits, intensive discussions with public officials, academics, lawyers, non-governmental and community-based organizations and earthquake victims themselves, combined with analysis of available written materials concerning the Great Hanshin Earthquake, Habitat International Coalition is of the view that at present, during the immediate post-quake period, and to a degree prior to 17 January 1995, significant discrepancies have been found to exist between the housing circumstances facing many thousands of Kobe residents and the international legal obligations held by the government of Japan. Many of these discrepancies can be classified as violations of international human rights law.

Prima Facie Violations of International Law

1 Lack of Citizen Participation in the Housing Process

Japan is a free and democratic society. Democracy implies full and free participation of citizens in the affairs of civil society and government. As it stands, the findings of the mission indicate that Kobe's citizens have not been afforded sufficient opportunities to participate in the housing process or in the development of housing plans, nor have they been fully consulted concerning their housing circumstances since the Great Hanshin Earthquake. A coalition of victims of the quake have, in fact, been literally shut-out of the Emergency Relief Offices at Kobe City Hall. Citizens and their representatives were never consulted regarding their post-earthquake housing needs nor wishes. It is the team's understanding that a 'corporatist' and a 'top down' approach was adopted from the beginning to deal with the consequences of the disaster. In other words, economy and development first, housing rights last.

Interviews with three levels of government officials confirmed this view. The government systematically did not consider international legal instruments such as the Covenant on Economic, Social and Cultural Rights nor did it fully consider its own Constitution when developing plans to cope with the aftermath of the earthquake. Despite the fact that the Kobe reconstruction plan declares that "We will support restoration-related activities initiated by the citizens" and "We will create a people-first community where each of the citizens is valued as an individual", the HIC mission witnessed far too little direct participation and influence by citizens, even though the will to contribute by those affected by the earthquake was clearly evident.

Indeed, the governmental attitude to citizen involvement in the post-quake plan was indicated in a petition presented to the FFM team which went so far as to assert that city officials blamed the earthquake victims for their own plight by stating that "they are nuisances who squat on public space" and "they are egoists who don't want to listen to the voice of reason". Such sentiments raise doubts as to basic human rights and seem to contradict statements in the government plan that it will undertake measures towards 'promoting human rights education and raising awareness about human rights to eliminate a sense of discrimination against minorities'.

The mission itself found similar sentiments amongst certain governmental officials, both through discussions with them, as well as the attitudes taken in implementing the post-earthquake reconstruction plan. For instance, we were informed that since 14 August 1995, City officials have refused to negotiate with members of the 'Coalition of Earthquake Victims' which has raised a symbolic tent directly in front of Kobe City Hall, despite many attempts by the Coalition to do so. In response to questions by the FFM team as to why this was the case, a governmental official responded "Sometimes they just don't want to listen". This patronizing attitude towards citizens was unfortunately found frequently during the HIC mission.

The Government also summarily rejected suggestions toward using privately owned lands in the city centre as locations for temporary housing sites, claiming it would be difficult to obtain the owners consent for this, that public land should be put to use first and that sites for temporary housing be larger than most inner city vacant plots.

The right to information has also been compromised in Kobe following the quake. For instance, the period of time between the announcement of the closure of the emergency shelters and the cut-off date for applying to temporary housing sites raises concerns of governmental coercion against victims. The collection of more than 10,000 signatures protesting against the closing of the shelters indicate the scale of public dissatisfaction with this initiative taken by the government, without adequate consultation or involvement of the many thousands of people affected.

In general terms, the same applies to the development of the reconstruction plan. This is a perfect example of the type of top-down decision-making structures which dominated the political landscape following the earthquake and which continue to make it difficult for all Kobe residents to enjoy the right to housing. The plan was rammed through without reference to proper democratic procedures

or popular consultation. It was made extremely difficult for citizens to give alternatives to the government plan, which not coincidentally closely resembles pre-existing redevelopment plans for large scale roads, buildings, infrastructure, etc, raising doubts as to its genuineness as a plan for solving all of the problems facing Kobe's earthquake victims. Questions as to the application due process rights also arise, in view of the fact that the City Plan was never put to a vote, despite a large movement opposed to many of the key principles pervading the plan.

2 Security to Tenure

One of the central tenets of the right to adequate housing under article 11(1) of the CESCR is legal security of tenure. The FFM findings indicate that a substantial number, indeed a large majority, of Kobe's earthquake victims do not currently possess **legal** security of tenure; whether they are residing in tents, waiting centres, evacuations centres, privately rented prefabricated housing, temporary housing or with family members or relatives. Many of these people can be easily removed from their housing as their housing situation has not been legally recognized by the State. Even for those with limited security of tenure (temporary housing dwellers), beyond the politically agreed upon two year 'promise' made by local officials, their housing future remains unpredictable.

Many of the earthquake victims have been forced from their communities. They have been refused permission to rebuild on their own (mortgaged) land and they cannot receive the financial assistance they may need to either rebuild their destroyed homes or to rent new units. As a result the government has failed to protect the right of citizens to return to their original communities, nor have they been afforded the right to choose where they wish to reside.

3 The Right to Life

The most basic and fundamental human right, indeed, the right from which all others necessarily stem, is the right to life. The total deaths resulting from the quake was 5502 deaths (88% died in collapsed houses, 10% from fire, 2% for other reasons). Since the quake, more than 800 persons have died as a result of quake-related consequences. In total, more than 41,500 were seriously injured.

Quake-related death rates were five times higher for recipients of welfare than for general population reflecting their poor and unsafe housing conditions at the time of the quake. For instance in Higashinada ward 3.89% of those who died were on welfare, whereas only 0.68% in a wealthier ward were killed. One lawyer with whom the team spoke asserted that the Kobe quake was a "judicially caused disaster" because courts dismissed expert criticism about maintaining earthquake standards at level 5 (where it remained) rather than level 6. Experts reported that had level 6 been chosen as the safe level, many hundreds of deaths could have been prevented.

Following the quake, at least 25 earthquake victims, primarily elderly people, committed suicide. Many of the experts with whom the team spoke indicated that these could have been prevented by appropriate governmental interventions in the housing and shelter domain, a greater availability of social workers and so forth.

Post-earthquake related deaths (PERD) were admitted by the government to have resulted in the deaths of 422 people who died after 17 January from 'earthquake related' syndromes.

From the information made available to the HIC delegation it does appear that a large number of people died **after** 17 January 1995, as a direct result of the poor quality of the housing they occupied. Over 250 residents of the evacuation shelters were estimated to have died by medical specialists directly because of the conditions in these centres that persisted even into September, 1995. This is in spite of infrastructural facilities for heating/cooling, cooking, sanitation and water being available within many of these buildings that were functioning schools and community centres.

The causes for these deaths include cold, inadequate ventilation, stress due to overcrowding and extreme lack of privacy, dehydration due to lack of access to water (especially people who are aged, sick or impaired) and malnutrition.

Medical experts claim that the bulk of these deaths were avoidable, had simple interventions been made. They also claim that a large number of people in partially damaged houses also died because of stress due to inadequate housing after the earthquake.

4 House Demolitions

Repeated warnings of the highly risk-prone situation of the city of Kobe have been issued both in technical documents and public statements by experts in Japan since the 1980s. This is because the city lies close to the tri-junction of an active fault system, part of which runs under the city. In addition, the possibility that structure of underlying strata and considerable land reclamation activities may lead to severe amplification of the ground acceleration during the earthquake and the resultant damage to both buildings and infrastructure in specific zones, was also known.

In their haste to expedite the process of reconstruction, the City-Government issued a series of notices with very short deadlines on the free demolition of buildings. This, combined with the incorrect information led a number of home owners to demolish their houses as they had no other means after the earthquake. Subsequently, a number of them claim that their houses could have been repaired and that they had been given false information.

Pursuant to article 11(1) of the Covenant, house demolitions and resultant eviction constitute a clear and unequivocal violation of the human right to adequate housing, and can only be considered acceptable if they are done in accordance with general principles of international law. When a dwelling is clearly uninhabitable, forms a threat to the life or health of a resident and once demolished, adequate compensation is paid to residents/owners, demolitions may be considered acceptable, subject as well, to a number of other concerns.

The FFM found that as a result of assessments performed by unskilled city officials and volunteers and hasty actions to expedite the process of reconstruction, the city government issued a series of notices with very short deadlines on free demolition of buildings.

This combined with incorrect or inaccurate information led a number of owners to demolish their houses themselves. Subsequently, a number of house owners claim that their houses could have been repaired and that they had been given false hope of receiving new homes. While it is naturally difficult to investigate these cases (the houses having been demolished), in the event that such information is found to be correct, the government was grossly negligent in its carrying out of assessments and unwavering determination to commence in the redevelopment plan to the severe detriment of the residents of Kobe. This type of behaviour has been condemned internationally and is in direct conflict with international legal principles.



Emergency evacuation centre

Indeed, the process of damage assessment of houses does not seem to have been rigorously conducted as per the example set by Japanese earthquake engineering specialists, IAEE guidelines and international experience. The assessment process was often carried out by unqualified personnel, with little or no training. Additionally, photographs were not taken nor were measured drawings prepared of partially damaged buildings.

5 Habitability, Living Conditions and the Absence of Adequacy

The overall conditions in all types of accommodation are substantially below the standards that a wealthy, democratic country like Japan could be expected to meet. In various contexts residents have been denied electricity, hot water, access to appropriate and healthy kitchen facilities, privacy, appropriately equipped households to meet physical challenges, secure, safe, violence-free environments, social support networks and security of tenure. It is questionable whether the government of Japan has fulfilled the obligation under the Covenant on Economic, Social and Cultural Rights to devote 'the maximum of available resources' towards the full realization of all rights, including housing rights.

The normal procedure internationally after a disaster of this magnitude is that a detailed socio-economic survey of the affected population is undertaken to enable the effective planning of the rehabilitation and tracking of its performance. This has not occurred in Kobe, thus making it difficult to determine the actual scale of housing needs in the city and the daily conditions facing dwellers. Although the government publication "Hyogo Prefecture: Today & Tomorrow" states that 'everyone has a right to live in a physically and spiritually comfortable life....Hyogo will become a foundation for the well-being of prefectural residents', such rhetoric has clearly not been transformed into reality.

The same applies to the official statement that "It is Hyogo's intention that all residents, including the aged and the disabled, will live peaceful lives in their own communities in harmony. Our goal is to accomplish a new style of welfare society of equal benefit to all".

A publication entitled "The City of Kobe" (1992) issued by the Kobe City government states that "Kobe has set two target levels to reach in its efforts to improve housing standards: a minimum housing standard of 50m sq. for family of four to be secured by all households". While generally laudable in intent (to the extent that housing adequacy can be measured exclusively by square meters), it is apparent that the conditions prevailing in the temporary housing sites fall desperately below these governmental goals. Indeed, what is now temporary housing should remain temporary, not permanent.

6 Quality of Construction

The quality of construction (though structurally stable to resist an earthquake and possibly a fire) leaves much to be desired: the pre-fab houses are erected on timber posts/piles of low quality that could easily rot; sites are often waterlogged and snakes and insects abound under buildings in some sites; floors are damp and waterproofing inadequate; ramps for the disabled are of bad quality and could collapse in a few seasons; a large proportion of the population reports sleep disorders because of no sound proofing and a number of old and impaired people have reported falling while trying to climb into the bathroom that has a step much higher than the living space.

7 Durability of Housing

The temporary buildings are constructed and designed to last 6 months to 1 year - but the bulk of the residents will be living in them for at least 2 to 3 years - as is common in most other disasters. However, the City-Government has issued permission to them to stay for only 6 months, extendible for another 6. They are also not willing to provide a guarantee that all the people in temporary housing will be accommodated in permanent housing.

8 Location of Housing

This fact does not seem to be taken into account in the location of large clusters of temporary housing, not only outside the neighbourhood of those affected but outside the ward. Many families have been moved over 15 km. from their previous location of residence - leading to severe dislocation of employment (especially when self-employed); significant fractions of limited incomes being paid towards transportation; severe stress to aged, sick and impaired people.

An essential component of housing rights as found within the CESC is that it should be located close to essential services, employment, etc. As it stands, the temporary housing, particularly that found in the North and West of Kobe does not satisfy these requirements. Moreover, international law protects the right of individuals to reside and settle where they wish, and the right to freedom of movement and the right to choose one's residence. Thousands of Kobe residents have been tricked, lied to, pressured and compelled by the municipal government to leave their neighbourhoods and live in temporary housing, Evacuation Centres and Waiting Centres. They have been excluded from participating in what should have been their personal decision as to where to live.

9 Women, Housing and Violence

The situation of many women who were affected by the earthquake and are staying with relatives requires special attention. Violence against women in the family is reported to have increased considerably as men find it increasingly difficult to cope with normal work pressure, uncertainty of housing and economic stability and the stress of having to live in confined conditions.

10 Discrimination and Disparate Impacts

The combined effect of both the earthquake and fire fell disproportionately on the poor, elderly, minorities and renters in the city. This is because most of them lived in low-quality housing stock before the earthquake as they could not afford better or did not want to step out of the strong community networks and relationships that provided them essential support. This fact has not been explicitly acknowledged by the city-Government or public policy that relates to the earthquake reconstruction or the city redevelopment plan. It is not surprising to discover that the short and long-term effects of an earthquake are not experienced equally by all sectors and groups within society. To ensure basic principles of equality, governments must provide special programmes, services, finances and housing to the most disadvantaged groups. At the same time, the government must ensure that it does not take advantage of the weakened position of the most vulnerable populations (the poor, women, children, elderly, disabled, etc.) by exercising its relative power in an unjust manner. One of the most common examples of this is giving undue priority to the interests and ideas of one group at the clear expense of another. This type of unequal and disparate treatment was found throughout the FFM. The Kobe City and Hyogo Prefectural governments did consult citizens in the reconstruction and redevelopment plans; however, they did not consult or seek to receive views from **all** citizens. While business leaders, company heads and others tied to corporate life were duly involved in these processes, those worst affected, the poor and generally marginalized groups who lost the most were and continue to be virtually excluded from these developments.

11 Privacy

The housing conditions found in waiting centres, evacuations centres as well as within many areas of temporary housing have generated substantial problems with regards to privacy rights and personal dignity. In some instances this stems from the non-existence of walls, or the existence of very short 'walls', which are only 80cm high or the general thinness and noisiness of dividing walls. There remains a great deal of human shame, indignity and lack of pride, experienced by victims.

12 Welfare Issues

The HIC team discovered that the government in Tokyo has flatly denied social/public assistance to those living in what it deems 'illegal' dwellings. Such measures are of questionable legality when viewed within the context of the CDESCR, the Constitution of Japan or any basic principles of equality.

Moreover, compensation provided to earthquake victims was very low and clearly insufficient to secure the basic necessities of life for victims. Other disasters in Japan resulted in victims receiving ten million Yen, while in Kobe victims received on average 240,000 Yen (+/- US\$ 2,400).

Whether or not the finances necessary were available to the government, it is clear that these have not been utilized in a priority manner towards satisfying the housing rights of citizens. This is indicated by the fact that immediately following the quake, the Kobe city government said it would not alter or delay the City Airport Plan, which will cost the city tens of billions of Yen; money which could have been redirected towards alleviating the suffering that resulted from the quake.

Yukiomi Kishimoto, Prof of Housing at Osaka University, told the HIC mission that "Lots could be bought from those who don't have enough funds to build new homes, houses could be built on them and rented out to the original owners with a land-lease, good for a certain length of time. In such a great disaster, homes should be considered part of one's right to live, and people should be guaranteed living conditions they enjoyed before the quake. This is the government's duty".

Technical Findings

- 1 There is no systematic national system of designating risk zones in various parts of Japan, in spite of the highest quality of scientific data and technical personnel. Each city seems to decide its level of vulnerability on its own, usually based on budgetary considerations. This is often in contradiction with prefecture level vulnerability plans -which is a huge bottleneck during a regional disaster, because of conflicting standards, procedures and unclear definition of areas of responsibility;
- 2 Following an earthquake of magnitude 5.6 (JMA scale) in 1984 with its epicentre located not far from the city the city-government of Kobe held a limited consultation and prepared a handbook on earthquake design setting the local standards at magnitude 5.0 (JMA scale). This was in spite of dissenting technical opinions that the standards should be set at least at 6.0, if not more, by geological, seismological and engineering experts;
- 3 The failure of large elements in the city infrastructure was because of the joint effect of the low standard and the fact that structures were designed (before 1981) to meet lower specifications for design details;
- 4 The collapse of major infrastructure especially the railways, roads and expressways was a major factor in the post-disaster confusion in which a significant number of survivors of the earthquake died because they could not be rescued;

- 5 This was compounded by a series of (possibly manageable) fires that devastated the densely populated areas of Kobe for 3 days, because water supply systems broke down, local water reservoirs had not been planned for (unlike Tokyo), fire-fighters could not reach critical locations because of the collapse of infrastructure and debris of damaged buildings. This led to both loss of life and property and according to experts was "avoidable" if disaster mitigation and management had been organised effectively;
- 6 This was not undertaken at City-Government level, though small sample surveys by the Prefectural Government indicated a very high fraction of the population living in evacuation shelters in early March and later in July more than 50%, expressed the desire for both temporary and finally permanent public housing as they could not afford anything on the rental market, especially since most had lost all of their belongings and life savings;
- 7 A latent problem is that of a large number of households who have moved out of their own accord to rental housing within the city of Kobe or typically outside the city limits. Most of them are commuting large distances and are having to cope with the extraordinary rise of 30% to 100% in the rental values in Kobe after the earthquake apart from hefty down-payments of between 350,000 to 1 million Yen. Some of these households are expected to seek public housing after the relatively small amounts of relief received from the Government and savings are exhausted as the un-employment situation in Japan worsens;
- 8 The condition of a large number of individuals and families that are sharing accommodation with relatives is also reported to be serious. This is because Japanese houses are usually small and not designed to take long-stay guests, apart from the burden on household economics. A number of cases of women and old people being ejected from relatives homes after their welcome is over has been reported;
- 9 The building regulations would have to be mediated locally and it is clear that the proposed redevelopment plan would have to be completely recast after detailed public hearings in each neighbourhood;
- 10 A number of criticisms of the Kobe Redevelopment Plan and controversial mega-projects like the proposed island airport have been made. Since adequate data was not available to examine the impact directly on the earthquake affected population, no comments can be made. Nevertheless, as a matter of principle, the first charge of funds should be to provide permanent housing to the most vulnerable, then rehabilitating self-employed people and small and medium businesses. This can be done with relatively low investment, and could be the most effective insurance against social tensions and homelessness in the region in the future.



Temporary housing site

8

Recommendations

Coping effectively and compassionately with traumatic post-earthquake situations such as occurred in Kobe obviously places a tremendous burden on financial, physical, social and other resources. In many respects the Japanese government deserves substantial credit in terms of the speed and scale of reconstruction and rehabilitation which has taken place since 17 January 1995. Most roads, bridges, port facilities and other damaged infrastructure has been rebuilt or is will on the way to completion, seeking to return Kobe to the city it was before the earthquake struck.

Conversely, as this report indicates, far too little was done in the days immediately following the quake. Governmental response to date has not been sufficient in terms of protecting the basic housing rights of those victimized one year ago. The events in Kobe, as dramatic as they were and still are, provide a unique opportunity for public authorities throughout Japan to ensure that the many mistakes made in the rehabilitation process -as well as some serious errors of judgement made by various governments prior to the Great Hanshin disaster- are not allowed to occur again.

Indeed, there is now such a wide range of information available, whether geological, technological, physical, social and otherwise, that current data clearly allows for decisions, policies and other actions by government to be made now which will assist in significantly mitigating the frightful scale of human misery which followed the Kobe quake and which continues to haunt so many innocent victims of the early morning in January when the earth shook like never before.

Unfortunately, it does not appear to Habitat International Coalition that those public officials responsible for developing the post-quake plan, particularly regarding issues relating to housing, actively sought out all possible sources of information which could have been used to ensure a more people-oriented, human rights-consistent approach. Much could have been learned, for instance, from the measures taken by governments, in cooperation with victims, in India and Mexico following the devas-

tating Mexico City (1985), Maharashtra (1993) and Northridge (1994) earthquakes to ensure that housing needs were met as quickly as possible and in a manner as closely as possible to the demands, wishes and rights of those who lost their homes.

Indeed, the HIC team inquired on several occasions during meetings with those responsible for drafting aspects of the reconstruction plans as to whether they drew on the post-quake experiences elsewhere in drafting the Kobe plans. None of those questioned indicated that they had done so, or even that such an examination would have yielded any assistance had they chosen to analyze policies which worked in other settings. This lack of interest in solutions pursued elsewhere by Japanese officials is difficult to understand and it is indeed hoped that such useful information will not be ignored in the future.

A special problem of note pertains to low-income households that were renting old traditional wooden buildings that are located in dense areas like Nagata-ku. Many of these buildings were constructed before building regulations came into force in the 1950s and were modified in the 1960s. The owners are often old people who depend on the low rental incomes for their survival. The inability to reconstruct houses is as much a liability for them as it is for their previous tenants. Many of them are therefore eager to consider other options of long term lease of land to the government or tenants groups to solve their problems collectively. This is in keeping with the tight network of relationships that exists in these areas.

The basis on which the city-Government is rejecting these options is the lack of public land and complexity of the process of negotiated land consolidation and redevelopment. It is not clear how much land is available and at what locations. However, it is clear that large relocation schemes were not necessary and small-scale redevelopment involving land sharing over 3-5 plots and 15-50 units could be possible. Innovative institutional interventions like intervening in the land market of the city to contain the rise of rental values for 2-4 years; fiscal incentives to convert private rental housing to public housing for 3-5 years; land banking and public purchase of private land in specified zones have not been explored fully. Full participation of all the stakeholders in the redevelopment process is a necessary condition for a successful programme. This may not be necessary in the case of public infrastructure, as it is directly in the control of the government, but the interface between public and private can only be bridged through a formal institutional forum for dialogue. In normal conditions, the city council and other fora are more than adequate, however, when such large numbers of people are directly affected, these systems get overloaded and a higher level of public and community participation has been shown to be most effective, as in Mexico city. While the Hyogo Prefecture has tentatively suggested to build housing on private sites, the Kobe city government has consistently and unfortunately refused to give serious consideration to such options.

While the Kobe City Restoration Plan (June 1995), states that the Kobe City Government will ensure the construction of 82,000 homes between fiscal years 1995-1997, by the time the HIC team left Kobe, in late 1995, not one unit had been constructed. The slow pace with which these measures, which superficially at least show at least some commitment on the part of the government to the pro-

vision of public housing, does however raise concerns as to the long-term housing situation facing dwellers in temporary housing sites and elsewhere.

Additionally, only a very meagre and inadequate system of housing credits are available to victims. A loan system for earthquake survivors should be pursued, including the relief of individual debt, or minimally, a debt freeze.

Human rights considerations should clearly play a much more prominent role than they have to date. The Japanese judiciary should give a much wider interpretation of CESC in Japan, taking into account developments since the 1989 case on article 2(1) and the experience of other countries in this regard. Lawyers should utilize the provisions of CESC in their pleadings, and all governments in Japan should clearly do more to incorporate the norms of the Covenant into decision-making processes.

The government should establish an independent commission including representation by victims and independent non-nationals, to determine whether and to what degree the Japanese government is liable for the deaths during the earthquake and PERD housing-related deaths, as well as how concrete measures could be taken as quickly as possible to alleviate the deprivation still facing thousands of earthquake victims a full year after the quake in one of the richest nations on earth.

It is in a spirit of constructive dialogue that HIC would like to offer the following recommendations to all levels of the Japanese government and other relevant actors to ensure that the housing rights of all citizens, particularly those still negatively affected by the earthquake are guaranteed expediently.

- a** Ensure the right of all earthquake victims who so request to return to the communities and neighbourhoods in which they were resident prior to the earthquake;
- b** Guarantee, as a right, the provision of affordable, adequate and centrally located public housing to all temporary housing dwellers who require it;
- c** Refrain from carrying out or tolerating any forced evictions of earthquake victims;
- d** Establish a consultative body on post-earthquake reconstruction, including housing and urban planning issues, comprised of representatives of civil society and government, with a view to promoting dialogue, democratic decision-making and ensuring in the most rapid manner possible, the full realization of the right to adequate housing for everyone;
- e** Undertake immediate measures aimed at improving housing and living conditions at waiting centres and temporary housing sites, in a manner reflecting citizen demands and to bring such housing up to internationally acceptable standards;
- f** Provide increased and appropriate levels of compensation to all victims of the earthquake, in particular to the families of those killed due to post-earthquake trauma resultant from poor housing

conditions and those whose houses were inadvertently demolished; both of which could have been prevented by proper governmental interventions. Also, consider seriously the provision of debt relief and no-interest loans to victims;

- g** Ensure the full enjoyment of the right to equality of treatment for all women, taking into account the special needs and rights of women. This should include ensuring that women are secure in their homes, free from domestic and other forms of violence and treated with full fairness and dignity;
- h** Prioritize the realization of the housing rights through, *inter alia*, special measures, in particular the rights of children, women, the elderly, the physically and mentally disabled, ethnic minorities, the homeless or any other marginalized group;
- i** Ensure the provision of adequate welfare assistance to all residents, notwithstanding the absence of a recognized address, as a matter of human rights;
- j** Scrupulously abide by the legal obligations contained in the International Covenant on Economic, Social and Cultural Rights, in particular those relating to article 11(1), and ensure that all post-earthquake legislation, policies and plans are fully consistent with the provisions of the Covenant;
- k** Submit to the United Nations Committee on Economic, Social and Cultural Rights, within the shortest possible time-frame the long overdue State report of the government of Japan; and
- l** Support the judicial interpretation, enforcement and implementation of articles 13, 14, 22, 25, 29 (1) and 29(3) of the Constitution of Japan to collectively include all components of the human right to adequate housing.

1 Kobe-City Government

- 1** Reexamine the special cases of those in parks and waiting centres with a view to finding appropriate housing solutions, within their previous communities for those who are aged, impaired, with children or with very low-incomes;
- 2** Reexamine the option of siting temporary housing on the outskirts of the city and the provision of all new temporary housing within 1 km. of previous sites through a process of negotiation with landowners, renters and using all possible public lands at their disposal;
- 3** Given that the first permanent public housing units will only become available in 1996-97 and that the programme may well last until early 1999, the modification of current temporary housing in remote sites should be taken up immediately. This should include proper foundations, ramps of adequate quality, soundproof partitions, thermal insulation and heating for the winter and modification of bathrooms and circulation for the aged and elderly. In addition, roads, basic medical, shopping and child-care and education facilities should be accessible within an acceptable distance;

- 4 A formal forum to advise and guide the reconstruction process should be established with representatives from all stakeholders in the process: city and prefectural government, corporations, city council members, volunteers and NGOs, professionals and most importantly representatives from community groups in each ward, with special representation of women, the aged and impaired population and minorities. This forum would help review and ground proposals for earthquake rehabilitation and ensure a consensus in decision making through a process of truly participative decision making;



Temporary housing under construction

- 5 A formal process of establishing community and neighbourhood groups that are elected/selected from each significant neighbourhood/community should be enabled. Special representation should be ensured for women, the aged, impaired and minorities. These groups would in turn select their own representatives to the city level forum and be responsible for local initiatives, arbitration, land adjustment, planning and future disaster mitigation activities;
- 6 Linkage of a rapid survey of the affected victims with the National Census and the establishment of a data-base to track the impact of the disaster on them and progressive rehabilitation;
- 7 Strengthening the social welfare staff handling the cases of earthquake affected communities and establish a formal linkage and forum for volunteers and NGOs to interact with officials. The definition responsibility of ward areas and sectors of support of both volunteers and welfare staff should be made transparent and public;
- 8 The publication of a weekly newsletter providing information on the status of the programme to

all earthquake affected households and regular notification in local newspapers and TV stations; and

- 9 Flood lighting must be provided in all abandoned houses and in areas where houses have been demolished.

2 Hyogo Prefectural Government

- 1 Prepare a realistic disaster mitigation plan that reflects the objective risk (independent of budgetary constraints) and vulnerability of buildings, public participation in planning and appropriate, legal, fiscal and financial incentives. Drawing on the experience of other programmes such as in Mexico city may be useful;
- 2 Establish a formal forum for negotiation between landowners who wish to sell or rent property for housing, potential renters, city-governments, construction agencies and financing agencies to aid redevelopment. A package of legal, fiscal and financial incentives to aid this process should be examined. Examining the process in California may be useful;
- 3 Re-examine the standards for temporary housing and advice to the city governments on the sources of funds and mechanisms to modify these houses;
- 4 Consider the possibility of a subsidy on transport for low-income households living in distant sites and simultaneously increase the frequency of site visits by case-workers to the homes of the elderly, impaired and sick;
- 5 Information on economic and social rehabilitation should be provided at the community level through regular information bulletins and visits by staff, existing staff could be increased and supplemented by volunteers operating under a structured programme of support;
- 6 Establishing a technical support cell with strong public education capabilities to inform residents about strengthening and repair measures and set up a roster of approved consultants and construction firms after appropriate training and certification.

3 Government of Japan

- 1 Establish a Sub-Bureau of Disasters that undertakes the periodic task of developing regional and urban risk and vulnerability zoning databases for disasters using the considerable professional research expertise in the country. Disaster scenarios should be constructed for especially vulnerable regions and cities to explore worst-case policy and management options.

This agency may also be responsible for the coordination of regional and city-level disaster mitigation and management plans and establishing an emergency protocol to ensure that the administrative failures that took place during the Kobe earthquake do not recur. Appropriate amendment of the relevant Emergency legislation may be in order.

This agency would also be responsible for coordinating the official process of damage assessment and detailed socio-economic survey of victims that should necessarily follow a disaster. It could set up and train a panel of experts, professionals and corporate institutions whose services could be pressed into action following a major disaster. It would also serve as a nodal centre for monitoring disasters and disaster mitigation in other parts of the world, especially institutional and technical innovations that could be adopted in Japan;

- 2 Re-examine the standards for temporary housing based on field research of acceptable standards by various population groups and the Kobe experience. After consultation with the building industry a national design competition may be held. Appropriate stockpiles of temporary housing may be made in strategic locations to respond to a future disaster rapidly;
- 3 Seriously re-examine the system of insurance coverage for earthquake and fire with the appropriate mechanisms to assess risk on a geographically explicit manner and fiscal and financial instruments and incentives to existing insurance institutions to take up this task expeditiously. The experience of other countries in this regard may be useful;
- 4 Re-examine the minimum standards for emergency housing, food, water, energy and basic needs in keeping with Japanese standards and requirements of UN human rights conventions and establishing a national emergency fund from which these expenses can be made before budgetary provisions can be made;
- 5 Publish and widely disseminate a six-monthly official status report on specified classes of disasters for a minimum period of 5 years;
- 6 Complete the long-overdue State report to the UN Committee on Economic, Social and Cultural Rights;
- 7 Setting up an official commission of enquiry into the causes, impacts, management failures and institutional changes required after the Kobe earthquake;
- 8 Immediately launch an education campaign against wife assault; and
- 9 Ensure facilities and waiting centres do not burden women in their daily realities.

4 Professional Associations

- 1 Establish standards and guidelines for professional service in the case of a disaster e.g. lawyers to undertake free legal aid, counselling and arbitration;
- 2 Document, analyze and publicise the reasons for institutional failure and the possible mechanisms for correction and use the instruments available with the professions domain to institutionalize these changes e.g. disaster mitigation;

- 3 Promote inter-disciplinary dialogue to bridge the gap between theory and practice and solve practical problems that are articulated by citizens; and
- 4 Establish processes by which public education and participation in technical decision making can be operationalised and be given greater legitimacy and training new members of the profession in these techniques.

5 Non-Governmental Organizations (NGOs)

- 1 Build strong long-term relationships with communities and integrate disaster mitigation with on-going activities;
- 2 Build a support network of volunteers and professional to take up specific tasks during a disaster e.g. legal arbitration; community health; technical assistance during construction;



Warning sign of a pending eviction

- 3 Establish a good working relationship and credibility with officials and the media to attempt to get feedback from communities to decision makers as rapidly as possible;
- 4 Strengthen abilities to catalyse participatory processes of planning and community action.

6 Community-Based Organizations (CBOs)

- 1 Develop a formal representative structure, when dealing with agencies like the government, with representation of all major opinions and interest groups in the community;
- 2 Network with other community groups and build common perspectives and share innovative means of aiding reconstruction;

- 3 Build linkages with other stakeholders e.g. landowners to enable a detailed and effective negotiation of new legal, property and economic relationships; and
- 4 Press for greater participation in planning and programme implementation and the right to be informed and participate.

7 Civil Society

a Within Hyogo Prefecture

Kobe, without its sense of community, will be a dead city of concrete, glass and expressways. The most important value that the people of the prefecture should battle to protect is community relationships, support and neighbourhoods. This can only be done through a process of organisation and strengthening the democratic process as it already exists in Japan. New institutional forms and fora will have to be created to realise the vision of a richer and more participative future for the citizens of the region. In the words of a senior resident "it is the least we can leave of our culture to our children".

b Elsewhere in Japan

The disaster at Kobe should never be repeated again. Community based disaster-mitigation has been the most effective means of saving lives and property all over the world - this must become the backbone of the Japanese effort. Much more has to be done to build bridges between official and corporate efforts and the ordinary citizen. The lessons of Kobe should enter elementary school textbooks, songs, art & literature within the year - so that it is never forgotten. As in the case of Hiroshima & Nagasaki, Japan should become the frontrunner in the world community for the cause of disaster mitigation.

9



Kobe, 17 January 1995

Annexes

Annex 1: Members of the FFM

Mr. Scott Leckie: (Utrecht, Netherlands) Legal advisor to Habitat International Coalition and Co-Director of the Centre on Housing Rights and Evictions.

Mr. Enrique Ortiz: (Mexico City, Mexico) Executive Secretary of Habitat International Coalition with extensive post-earthquake reconstruction experience.

Mr. Aromar Revi: (New Delhi, India) Director of The Research Action Unit (TARU) with extensive experience in post-earthquake reconstruction in India.

Ms. Leilani Farha: (Toronto, Canada) Human rights lawyer with extensive experience in housing rights matters.

Annex 2: Housing Rights and International Law

This report examines levels of compliance by the Japanese government with the International Covenant on Economic, Social and Cultural Rights (CESCR), which entered into force for Japan on 21 September 1979. While international human rights law widely recognizes various manifestations of housing rights, article 11(1) of the CESCR (adopted by the United Nations in 1966 and gaining the force of law in 1976) contains perhaps the most significant international legal source of the right to adequate housing:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the

continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.¹

In addition to the Covenant, the human right to adequate housing finds explicit recognition within an array of international instruments.² While the provisions of article 11(1) of the CESCR may superficially appear inconclusive, meaningful legal substance and content can be identified through a thorough analysis of additional provisions of the Covenant, and the jurisprudence and interpretive exercises undertaken by the UN Committee on Economic, Social and Cultural Rights toward clarifying the core contents of the right to adequate housing found within the CESCR. The Committee and others have amply recognized that housing rights are infinitely more complex than the still sometimes cited 'right to a roof over one's head'. Housing must be viewed for what it actually is in most parts of the world; a popular process through which people themselves seek out, create options and individually and collectively attempt to solve their housing dilemmas; with limited, but not total involvement by the State. In this regard, housing-associated freedoms, in particular the right to fully participate within the housing process are fundamental.

While the substantive provision of an adequate dwelling/house to persons and families without accommodation may constitute a key aspect of the housing rights dynamic (a right **to** housing), particularly in emergency contexts such as natural disasters, numerous additional concerns also form the basis of housing rights claims. In this respect, consideration should be given to issues such as the provision of security of tenure (and consequent protection against arbitrary or forced eviction), non-discrimination in the housing sphere, equality of treatment and access vis-a-vis housing, questions of housing affordability, landlord-tenant relations of all kinds and others.

Equal attention must be placed in this respect on the different and unique housing requirements of distinct groups within society and the duty incumbent upon governments to ensure adequate access to

1 International Covenant on Economic, Social and Cultural Rights (1966), adopted by United Nations General Assembly (UNGA) resolution 2200A(XXI), 16 December 1966, entered into force on 3 January 1976, 113 States Parties as of 10 December 1995.

2 These include the Universal Declaration on Human Rights (art. 25(1)), the Convention on the Elimination of All Forms of Racial Discrimination (art. 5(e)(iii)), the Convention on the Rights of the Child (art. 27); the Convention on the Elimination of All Forms of Discrimination Against Women (art. 14(2)), ILO Recommendation No. 115 on Workers' Housing, the UN Declaration on Social Progress and Development, the UN Declaration on the Rights of the Child, the Vancouver Declaration on Human Settlements, the UNESCO Declaration on Race and Racial Prejudice, the Declaration on the Right to Development and others. For a comprehensive listing of all sources of international law recognizing the right to housing, see annex 6 and: COHRE (Centre on Housing Rights and Evictions) (November 1994), *Sources #4: Legal Provisions on Housing Rights: International and National Perspectives*, COHRE, Utrecht.

and provision of housing resources suited to the needs of the disabled, the chronically ill, persons with HIV/AIDS, migrant workers, the elderly and other groups. Ultimately, the human right to adequate housing implies the right to security in a place and comprises an assertion of identity and uniqueness of culture. It is a right embodying equality of access. Housing rights include the right to participate in all aspects of the housing decision-making process, and to order and to influence one's living environment.

There are several points regarding the content of the right to housing which are clear from the wording of article 11, while other aspects have emerged progressively as the Committee on Economic, Social and Cultural Rights and other bodies have interpreted and defined this right. As the right to housing is enhanced by the term "adequate", the right is not simply a right to a dwelling *per se*, but a right of access to a certain standard of housing and surrounding elements. Further, the right to housing is part of the broader right to an adequate standard of living which is defined to include, at the very least, adequate food, clothing and housing.

These norms are by no means intended to be static concerns dealing with the satisfaction of bare minimum needs. Rather "everyone" is also possessed of the right to "a continuous improvement of living conditions".

The Committee has adopted two over-riding principles of interpretation of the right to adequate housing; that it is universal and that it must not be interpreted narrowly.³

General Comment No. 4 on the Right to Adequate Housing, issued by the Committee in 1991, emphasizes that the focus of the right to adequate housing must be on disadvantaged groups, that poli-

3 Paras. 6 & 7 of General Comment No. 4 assert:

6. The right to adequate housing applies to everyone. While reference to "himself and his family" reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitation upon the applicability of the right to individuals or to female-headed households, or other such groups. Thus, the concept of "family" must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2(2) of the Covenant, not be subject to any form of discrimination.

7. In the Committee's view the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity. This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised. Thus, "inherent dignity of the human person" from which the rights in the Covenant are said to derive requires that the term "housing" be interpreted so as to take account of a variety of other considerations, most importantly that housing rights should be ensured to all persons irrespective of income or access to economic resources.

cies should not favor advantaged social groups at the expense of others and that effective monitoring must involve detailed information about vulnerable and disadvantaged groups, including low income groups.

Moreover, the right to housing under international law is qualified by the term 'adequate'. For housing to be deemed 'adequate', General Comment No. 4 identifies seven aspects of the right to adequate housing, including: security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy (para. 8).

The General Comment also discusses the relationship between the enjoyment of other human rights and the right to adequate housing. Paragraph 9 declares that "the full enjoyment of other rights - such as the right to freedom of expression, the right to freedom of association (such as for tenants and community-based groups), the right to freedom of residence and the right to participate in public decision-making - is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing".

The Covenant also guarantees the right to freedom from any form of discrimination (art. 2(2), the right to social security (art. 9) and the right to health (art. 12) which are also of direct relevance to the housing rights provisions of the CESCR and the overall housing situation in Kobe. Other rights, including the right to freedom of movement, the right to remain, the right to life, the right to information and others are pertinent to the Kobe earthquake situation.

The obligation of governments to prioritize attention to securing the housing rights of the most disadvantaged groups in society is also addressed in General Comment No. 4: "States parties must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others" (Para. 11).

In a provision directly relevant to the situation in Kobe, the Committee has also stated in General Comment No. 4 that:

"despite externally caused problems, the obligations under the Covenant continue to apply and are perhaps even more pertinent during times of economic contraction. It would thus appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant" (Para. 11).

It is clear from the context of the right to housing within the Covenant as a whole that the right does not merely oblige the government to provide housing to those in need but includes many regulatory and legislative obligations on governments to, for example, provide security of tenure, protect against

unjustifiable rent increases, prevent demolition of homes and prohibit discrimination. Many components of the right to housing are almost universally justiciable, such as the protection from eviction, compensation following an illegal eviction, security of tenure rights, landlord and tenant laws, harassment, discrimination and rent regulation.

That housing rights responsibilities are now a fundamental component of the State obligations arising under international law is not disputed. Under the general obligations clause of the Covenant found in article 2(1), States parties are required to take legislative and other steps to the 'maximum of its available resources', with a view to achieving 'progressively' the full realization of the rights recognized in the Covenant, including, the right to adequate housing. Under the same article, States are also required to ensure that no form of racial or other manifestations of discrimination are tolerated to the detriment of the enjoyment of the rights found in the Covenant.⁴

As practice has all too often shown, States frequently seek to conceal themselves from international critiques behind the loose terminology utilized in article 2. However, as linguistically imprecise as these terms may be, there now exists a degree of agreement as to the general duties of States under the Covenant, which establish important principles of international law on housing rights. For instance, the Committee has declared that even when 'available resources' are verifiably inadequate, States must nonetheless strive to ensure the widest possible enjoyment of the relevant rights under prevailing circumstances, and demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, these minimum responsibilities.⁵

The "progressive realization" clause imposes an obligation on States to move as expeditiously and effectively as possible towards the goal of realizing fully the right to housing, and as an obligation, exists independently of any increase in available resources. Any deliberately retrogressive measures affecting housing or other rights could only be justified by reference to the totality of the rights provided for in the Covenant and in the context of the full utilization of a States maximum available resources. Above all, this clause requires effective and equitable use of combined resources immediately.⁶

Concerning the relationship between housing rights and the principle of non-discrimination, the Committee on Economic, Social and Cultural Rights has established that the rights contained in article

4 Article 2(1) reads: "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

5 General Comment No. 3 (1990): the nature of States parties' obligations (art. 2, para. 1 of the Covenant), UN doc. E/C.12/1990/8, pp. 83-87.

6 id.

2(2) of the Covenant to exercise the right to housing and other social and economic rights free of discrimination because of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" imposes an immediate obligation on the state to protect citizens from discrimination in access to food, clothing, housing and in all other social and economic rights.

At another level, under the Covenant all States possess a **minimum core obligation** to ensure the satisfaction of essential levels of each of the rights found in this decisive legal text. As such, any State in which any significant number of individuals is deprived basic shelter and housing is, *prima facie* failing to perform its obligations under the Covenant.⁷

The obligation to **respect** housing rights requires the state, and thereby all of its organs and agents to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of the individual or infringing upon his or her freedom to use those material or other resources available to them in a way they find most appropriate to satisfy individual, family, household or community housing needs. In this context, governments should desist from restricting the right to popular participation and must accept the corresponding commitment to facilitate and create economic, social and political conditions conducive to self-help initiatives by the beneficiaries of housing rights, as well as rights to freely organize and assemble, which are essential for the assertion of demands by dwellers or tenants groups.

Of particular importance, the responsibility to respect housing rights requires states to refrain from carrying out, advocating or condoning the practice of forced or arbitrary evictions of any persons or groups from their homes. States must also respect people's rights to build their own dwellings and order their living environments in a manner which most effectively suits their culture, skills, needs and wishes. Scrupulously honoring the right to equality of treatment, principles of non-discrimination, the right to privacy of the home and other relevant rights form constituent aspects of the duty to respect.⁸

⁷ General Comment No. 4, para. 10.

⁸ The obligation to respect, thus, includes: (1) The right to popular participation throughout the housing sphere, including the right of citizens to influence and decide upon any housing laws or policies affecting them; (2) The rights to organize, assemble and association, particularly with respect to tenants organizations, community-based organizations and housing cooperatives; (3) Legal protection from forced or threatened eviction or house demolitions; (4) The right to equality of treatment, particularly in terms of the allocation of housing resources, access to housing finance and residence permits; (5) The right to privacy, including the protection from arbitrary searches of residences; (6) The right to be free from racial discrimination, particularly in the housing allocation process; (7) Tolerance and promotion of housing-related freedoms, including the right to self-help housing initiatives; (8) Cultural attributes of traditional housing construction methods and the protection of housing of historical significance; and (9) The principle of refraining from coercive measures forcing another State to violate housing rights.

While the duty to respect essentially implies a series of limits of State action, the obligation to **promote** compels governments to recognize the multifaceted human rights dimensions of housing and to take steps to ensure that no measures are taken with the intention of deliberately eroding the legal and practical status of this right. Moreover, comprehensive legislative review should take place, with any existing legislation or policies negatively affecting the exercise of the right to housing subject to repeal or alteration.

The promotion function additionally requires States to place sufficient legal and policy emphasis on the full realization of housing rights, through a series of active measures including national and/or local legislative recognition of the right, the incorporation of housing rights imperatives into housing and related policies, and the identification of discernable 'benchmarks' towards the full enjoyment of housing rights by all sectors of society.⁹

The Committee has emphasized that "policies and legislation should not be designed to benefit already advantaged social groups at the expense of others".¹⁰ Further refinement of the policy aims required with the recognition of housing rights demand that governments adopt national housing strategies defining the objectives for the development of the housing sector, identifying the resources available to meet these goals, the most cost-effective way of using them and setting out the responsibilities and time-frame for the implementation of the necessary measures. For both reasons of relevance and effectiveness, as well as in order to ensure respect for other human rights, such a strategy should reflect extensive genuine consultation with, and participation by, all those affected, including the homeless, the inadequately housed and their representatives. Subsequent steps must be taken by governments to ensure co-ordination between ministries, regional and local authorities in order to reconcile related policies with the obligations arising from the Covenant.

Accurately assessing the degree to which the right to housing remains unsatisfied or denied exists as a further element of the State obligation to promote the norm. An identifiable effort must be made to

9 On the need for more intensive action on developing housing rights indicators, see: M. Kothari, "The Human Right to Housing: Problems and Perspectives of Developing ideal Indicators", (Paper prepared for the UN Expert Seminar on "Appropriate Indicators to Measure Achievements in the Progressive Realization of Economic, Social and Cultural Rights", held in Geneva from 25-29 1993). Also, among other developments geared toward more accurately measuring the degree to which the right to housing is in place, the UN Centre on Human Settlements (Habitat) has developed a set of key indicators designed to capture the essential elements of the shelter sector performance in all countries (UN doc. HS/C/13/INF.7 [Housing Indicators Programme], 27 April 1991).

10 General Comment No. 4 (para. 11).

monitor and identify where and to what extent the right is not in place, and consequently to target housing policies and legal measures towards attaining the right for everyone in the shortest possible time.¹¹

The obligation to **protect** the right to housing obliges the state and its agents to prevent the violation of any individual's rights to housing by any other individual or non-State actor. Housing rights beneficiaries must, therefore, be protected from abuse by landlords, property developers, land owners or any other third party capable of abusing these rights.

Where such infringements do occur, public authorities should act to preclude further deprivations as well as guaranteeing access to legal remedies for any infringement caused. Effective measures protecting persons from forced evictions, racial or other forms of discrimination, harassment, withdrawal of services or other threats must also be established.¹²

11 The obligation to promote housing rights involves the following measures: (1) Comprehensive legislative and policy review of all laws, regulations or other directives having any negative bearing on the fulfillment of housing rights should be undertaken without delay upon acquiring housing rights obligations; (2) Legislative and policy recognition of the right to adequate housing; (3) Targeted policies towards ensuring the full realization of housing rights in the shortest possible time frame for all sectors of society; (4) Establishing benchmarks designed to monitor societal housing needs, including the use of appropriate indicators towards this end; (5) The development and implementation of a national housing strategy; (6) High-level attention and targeted strategies toward satisfying the housing needs of disadvantaged groups, including the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters and people living in disaster-prone areas; and (7) Ensuring the full accessibility to housing resources by all ethnic, racial, national, minority or other social groups.

12 Generally categorized, the key features of the obligation to protect the right to housing include: (1) 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; (2) Additional immediate steps must be taken to ensure that violations of housing rights by third parties, including protection from abuse by landlords are prevented; (3) The availability of impartial legal remedies in cases of alleged violations of housing rights; (4) The comprehensive provision of security of tenure throughout all housing sectors, applicable to all citizens; (5) Active measures designed to protect all persons against racial or other forms of discrimination, harassment and the withdrawal of services; (6) The affordability of housing for all income groups in society. In this regard, housing costs should never be allowed to rise to levels preventing dwellers from accessing and satisfying other basic needs; (7) The regulation of rent levels and provision of housing subsidies should be undertaken in an appropriate manner, with a view to ensuring compliance with the affordability principle; (8) The overall habitability and physical safety of dwellers should be actively protected and adequately stimulated, with particular regard to protecting dwellers from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors; (9) Housing should be built at locations in near proximity to employment options, schools, health care centres and open spaces. Conversely, housing should not be built in dangerous areas where threats to environmental health and hygiene exist; and (10) States must respond constructively to housing rights violations, wherever they occur, both domestically and in other countries.

The obligation to **fulfil** the right to adequate housing is the most interventionary in nature, involving issues of public expenditure, governmental regulation of the economy and land market, housing subsidies, monitoring rent levels and other housing costs, the provision of public housing, basic services and related infrastructure and taxation and subsequent redistributive measures. On the issue of housing finance and budgetary allocations, States must establish forms and levels of expenditure adequately reflecting society's unmet housing needs, and which are consistent with the commitments arising from the Covenant and other legal sources enshrining housing rights. Primarily, the duty of fulfillment comprises those active measures by government necessary for guaranteeing for each person under its jurisdiction opportunities to access the entitlements of housing rights which cannot be obtained or secured through exclusively personal efforts.¹³

Finally, under the Covenant, the international community possesses certain identifiable obligations under international law regarding the enforcement of housing rights norms, including: a) refraining from any coercive measures designed to force a State to abrogate or infringe its housing rights obligations; b) providing financial or other assistance to States affected by natural or manmade disasters, resulting in, *inter alia*, the destruction of homes and settlements; c) ensuring the provision of shelter and/or housing to refugees fleeing persecution, civil strife, armed conflict, droughts or famine; and d) responding to abject violations of housing rights carried out in any State.

As far as the international monitoring of the Covenant is concerned, the UN Committee on Economic, Social and Cultural Rights has identified several States parties to the CESCR which have violated the housing rights provisions of article 11(1), which gives an indication of both the seriousness with which the Committee views this right, as well as existence of sufficiently precise norms in the Covenant to enable the Committee to make such pronouncements. The Committee has specifically critically addressed housing rights issues in States parties relating to: (a) the rights of tenants; (b) the universal provision of security of tenure; (c) homelessness; (d) the need to construct low-income housing; (e) the lack of domestic remedies for housing rights violations; (f) land regularization; (g) the

¹³ The obligation to fulfil housing rights demands the following steps: (1) The devotion of a reasonable proportion of public expenditure on housing, consistent with social housing requirements; (2) Housing subsidies for tenants and first-time home buyers, as well as the establishment of effective housing finance measures for low-income groups form a crucial aspect of this obligation; (3) The financing, construction and maintenance of social housing resources by public agencies where appropriate, as well as the financing by the State of such activities; (4) The provision by the State of public services, including infrastructure, water, electricity, sanitation, heating, sewage, draining, roads, health care facilities and emergency services; (5) Active measures should be undertaken by the State in support of those persons, families and groups unable to satisfy their housing needs by individual efforts; (6) The promotion of natural and/or indigenous building materials for use in the housing process; (7) A proportion of overseas developmental assistance by donor countries to other States should be provided towards assisting developing countries in satisfying housing rights obligations; and (8) The provision of adequate housing accommodation for all refugees and asylum seekers within a State's borders.

prevalence of inadequate living conditions and service availability; (h) the need to establish a national housing commission; (i) protection from discrimination within the housing sphere; and (j) expropriation for social housing purposes.

Further indications of the stature of housing rights under international law include the work of the United Nations Special Rapporteur on Housing Rights who presented his final report to the UN in August 1995 (UN doc. E/CN.4/Sub.2/1995/12) and the publication of a 'Housing Rights Strategy' by the UN Centre on Human Settlements in April 1995. Moreover, the UN will convene the World Summit on Human Settlements in June 1996, where housing rights will likely dominate the agenda and discussions.

Housing Rights Violations

The Committee's General Comment No. 4 stipulates two clear circumstances amounting to violations of the housing rights provisions of the Covenant, namely:

Para. 11: [A] general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations found in the Covenant.

Para. 18: [T]he Committee considers that instances of forced evictions are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.

Similarly, the Special Rapporteur on Housing Rights has devoted substantial attention to the issue of acts and omissions by States amounting to violations of the right to housing in his three reports as well. Acts of racial or other forms of discrimination in the housing sphere, demolition or destruction of housing as a form of punishment, failing to reform or repeal legislation inconsistent with the contents of housing rights and a range of additional actions have been declared in principle, to constitute further violations of the right to adequate housing.¹⁴

In addition to outlining earlier proclamations as to what would constitute housing rights violations, the Special Rapporteur also outlined a lengthy series of both acts and omissions which could provoke concern regarding possible infringements of the right to adequate housing. These merit a full reiteration. Acts which could be considered to constitute housing rights violations include, but are not limited to:

- 1 Carrying out, sponsoring, tolerating or supporting the practice of forced evictions;
- 2 Demolishing or destroying homes or dwellings as a punitive measure;

¹⁴ See the four reports of the UN Special Rapporteur on Promoting the Realization of the Right to Adequate Housing (UN docs. E/CN.4/Sub.2/1992/15; E/CN.4/Sub.2/1993/15; E/CN.4/Sub.2/1994/20 and E/CN.4/Sub.2/1995/12).

- 3 Actively denying basic services such as water, heating or electricity, to sectors of society, despite a proven ability to provide these;
- 4 Acts of racial or other forms of discrimination in the housing sphere;
- 5 Adoption of legislation or policies clearly inconsistent with housing rights obligations, particularly when these result in homelessness, greater levels of inadequate housing, the inability of persons to pay for housing and so forth;
- 6 Repealing legislation consistent with, and in support of, housing rights, unless obviously outdated or replaced with equally or more consistent laws;
- 7 Unreasonable reductions in public expenditures on housing and other related areas, in the absence of adequate compensatory measures;
- 8 Overtly prioritizing the housing interests of high-income groups when significant portions of society live without their housing rights having been achieved;
- 9 Constructing or allowing the building of housing upon unsafe or polluted sites threatening the lives and health of future occupants; and
- 10 Harassing, intimidating or preventing non-governmental and community-based organizations and grassroots movements and groups concerned with housing rights from operating freely.¹⁵

Conversely, according to the Special Rapporteur on Housing Rights, a series of failures to act (omissions) could also constitute violations of housing rights obligations. These include:

- 1 Failing to take "appropriate steps" as required under the Covenant on Economic, Social and Cultural Rights;
- 2 Failing to reform or repeal legislation inconsistent with the Covenant;
- 3 Failing to enforce legislation inherent in the fulfillment and recognition of housing rights;
- 4 Failing to intervene in the housing market, especially concerning rent levels, rent control, rent subsidies, issues of security of tenure and prevention of undue speculation;
- 5 Failing to incorporate and implement accepted international minimum standards of achievement concerning housing rights;

¹⁵ UN doc. E/CN.4/Sub.2/1993/15, para. 144.

- 6 Failing to provide infrastructure, basic services (water, electricity, drainage, sewage, etc);
- 7 Failing to prohibit or prevent individual or civil actions amounting to housing rights violations by any person capable of committing such acts;
- 8 Failing to utilize all available resources for the fulfillment of this right;
- 9 Failing to integrate and full consider the implications for housing rights when developing macro-economic policies impacting upon the housing or related social spheres; and
- 10 Failing to submit reports as required under articles 16 and 17 of the Covenant on Economic, Social and Cultural Rights, as well as under other treaties.¹⁶

Annex 3: The Covenant Within Japanese Jurisprudence

"Treaties concluded by Japan and established laws of nations shall be faithfully observed."
(Art. 98(2) of the Const. of Japan)

Throughout the fact-finding mission the HIC delegation continually brought attention to the clear relevance of the Covenant on Economic, Social and Cultural Rights to the prevailing situation of housing deprivation in Kobe, consistently raising this issue with governmental officials, the legal community and various NGOs and CBOs. As noted earlier, very few public officials with whom the HIC delegation spoke (despite the fact that these included members of Ministries clearly linked to the enjoyment of economic, social and cultural rights), had any knowledge of the existence, let alone detailed awareness of the legal and other issues arising pursuant to the Covenant.

In order to clarify further the general legal position of the Covenant in Japan, the HIC team also examined relevant academic literature, as well as holding discussions with several Japanese lawyers as to this status. Above all, the delegation found that as far as the judiciary in Japan is concerned, the Covenant has played only a limited role thus far.

Although the Japanese judiciary has taken an overly restrictive view of the legal relevance of the CESCR within the domestic legal system, basing their arguments primarily upon a very narrow reading of the general obligation norms contained in article 2(1) of the CESCR, the validity of the Covenant within Japan, the governmental obligations arising from this treaty and the pertinence of the CESCR to

¹⁶ id, para. 145.

the situation in Kobe is beyond dispute. Indeed, article 98(2) of the Constitution of Japan clearly states that 'treaties concluded by Japan and established laws of nations shall be faithfully observed'. Nevertheless, in practice the Covenant has been accorded a very limited scope within the national legal and judicial frameworks, as the following examples reveal.

In 1986 the Osaka High Court denied the direct applicability of article 11(1), suggesting that the CESCRC as a whole was not directly applicable because of article 2(1). In 1989 the Supreme Court of Japan denied the direct applicability of the CESCRC in the *Shiomi* Case. The Osaka High Court argued that "This Covenant...is not a type of treaty whose contents become operative like domestic law by themselves, but a type of treaty which requires legislative procedures for its contents to be implemented...' An appeal was made, but the Supreme Court rejected it, denying the direct applicability of article 9 of the Covenant in the following words: "This article...does not provide for a concrete right to be granted to individuals immediately. That is clear also from article 2(1) which requires the States parties to 'take steps with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures'.

While many refutations could be applied against these judgments, Habitat International Coalition would like to emphasize several key legal points in this regard in support of the relevance of the CESCRC within Japanese society:

- 1 In 1983 the Tokyo High Court reversed a lower court decision, stating implicitly that the CESCRC created clear obligations on behalf of the government (judgment of 20 October 1983, Tokyo High Court, 1092 Hanrei Jiho 32, at 33-4);
- 2 In 1992 the Tokyo High Court used the term 'self-executing'...apparently recognizing the direct applicability of the Covenant on Civil and Political Rights (CCPR)' (judgment of 8 April 1992). If the CCPR can be recognized in this manner, it is doubtful that a blanket exemption can be made of the CESCRC, which contains many similar, if not identical, clauses to those found in the CCPR;
- 3 Customary law is generally regarded as a part of Japanese law within national jurisprudence. Consequently, arguments could be made as to the necessity of accepting the Universal Declaration on Human Rights (housing rights are found in art. 25(1) of the UDHR) as part of Japanese law, by virtue of its frequently referred to status as customary law;
- 4 If there is no domestic law giving effect to treaties, the government usually attempts to have laws and regulations enacted to give effect to a treaty. It is arguable whether the government of Japan has legislated sufficiently to ensure the full realization of article 11(1) within the shortest possible time-frame;
- 5 The decisions in the 1986 and 1989 cases noted above must be seen light of the fact that in no case has a court found Japanese law to be inconsistent with the Covenants. As such, the

Japanese judiciary has shown great reluctance to base decisions at all on international legal provisions in general terms, not solely on the basis that the CESCR is not directly applicable;

- 6 International law requires judicial systems, at a minimum, use international standards as interpretive aides in determining the meaning of domestic laws when these require clarification. In some cases, courts in Japan have done so by reference to the UDHR. This could be done to a much greater degree;
- 7 Most of the judicial decisions made in Japan relating specifically to the Covenant, were made prior to the issuance of many new texts and interpretations of the Covenant by the Committee on Economic, Social and Cultural Rights and other (quasi) judicial bodies, both international and national. For instance, neither General Comment No. 3 ('The nature of States parties obligations (art. 2(1) of the Covenant')) nor General Comment No. 4 (The right to adequate housing (art. 11(1) of the Covenant) were adopted when the 1986 and 1989 decisions were made. Moreover, the courts appear to have consciously ignored interpretative documents (soft law) developed by international lawyers;
- 8 Many provisions of the Covenant are clearly precise enough to be applied or adjudicated in Japan. No judiciary would oppose the justiciable nature of the non-discrimination clauses of the Covenant, nor should they ignore sentiments contained in both General Comment #3 and General Comment #4 which elaborate clearly those aspects of the Covenant and housing rights which can and should be subject to judicial scrutiny within all States parties to the CESCR, including Japan;
- 9 The courts have refrained from referring to the national jurisprudence of other nations' on the CESCR, despite these being of potentially great assistance;
- 10 As far as decisions concerning the applicability of the CESCR in Japan are concerned, the courts have neglected to address important legal issues such as 'pacta sunt servanda' (treaties shall be observed in good faith), nor the implications of article 27 of the Vienna Convention on the Law of Treaties which provides that "A party [to a treaty] may not invoke the provisions of its internal law as justification for its failure to perform a treaty...".

Many additional points could be made, but suffice it to say that the role of the CESCR within Japan may be much more significant than the status accorded it thus far by the judiciary. Of course, the domestic applicability of the CESCR remains only one aspect of the overall relevance of this treaty within Japan, and though courts have taken this text less seriously than perhaps could have been the case, the fundamental rights and obligations it contains remain legally binding and relevant to the post-earthquake situation in the country.

It appears to HIC that the treaty obligations of the government under the Covenant have almost entirely been ignored by public officials in the post-earthquake period. Moreover, the government of

Japan is more than four years late in submitting a 'State report' to the UN Committee overseeing compliance with the Covenant, raising doubts as to the seriousness with which the government is taking its legal obligations arising from this text. States parties to the Covenant are required to submit reports once every five years. Japan has not reported, for instance, on the status of article 11 since 1986.

Annex 4: Relevant Provisions of the Constitution of Japan

In addition to international sources of law relevant to the post-earthquake situation in Kobe and Hyogo, the 1946 Constitution of Japan also contains several articles which can and do have a bearing upon the rights of those detrimentally affected by the Kobe earthquake. Among these are the following:

Article 13: All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

Article 14: All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.

Article 22: Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.

Article 25: All people shall have the right to maintain the minimum standards of wholesome and cultured living. 2. In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.

Article 29(1): The right to own or to hold property is inviolable.

Article 29(3): Private property may be taken for public use upon just compensation therefor.

Although the HIC delegation did not have sufficient time at its disposal to examine the prevailing state of jurisprudence under these articles which could be applicable to the situation examined in and around Kobe, nor to discern the current state of affairs regarding legal struggles on behalf of affected dwellers in Kobe, HIC did take these norms into account in developing its analysis of the housing rights situation in the area at present.

Annex 5: Documents Reviewed

- Building Centre of Japan (August 1992), *A Quick Look at Housing in Japan*, Tokyo;
- Economist (April 1995) *No Hiding Place: A Comparison of the Kobe and Northridge Earthquakes*, Economist Home Page, World Wide Web;
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- Iwasawa, Yugi (1994) 'The Relationship Between International Law and National Law: Japanese Experiences', pp. 333-390.
- Jameson, Sam (29 September 1995) 'Kobe Faltering Despite Hopes' in *Los Angeles Times*, p. A5;
- Kobe City Government (1995) *Kobe City Restoration Plan*, Kobe;
- Kobe City Government (Sept. 1995), *Public Notification of Earthquake Information (04 Feb. - 15 Aug. 1995)*, Kobe;
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- Leckie, Scott (1992) *From Housing Needs to Housing Rights: An Analysis of the Right to Adequate Housing Under International Human Rights Law*, International Institute for Environment and Development (Human Settlements Programme), London;
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- Takada, Hassani & Aziz (1995) *Quick Report on the 1995 South Hyogo Great Earthquake*, Kobe University, Kobe;
- Ueda, Kozo (1995), *What Broke Out in the Great Hanshin Earthquake: Medical Care and Welfare*, Kobe Cooperation Hospital, Kobe;

- United Nations Centre on Human Settlements (UNCHS) (1989) *Renovation of Low-Income Housing in the Historic Centre of Mexico City After the Earthquake of September 1985*, UNCHS, Nairobi;
- UNCRD (1995), *A Call to Arms: Report of the 17th January 1995 Great Hanshin Earthquake*, Nagoya;
- United Nations Department of Humanitarian Affairs (DHA) (1995), *The Great Hanshin-Awaji (Kobe) Earthquake in Japan*, Geneva;
- United Nations Disaster Relief Organization (UNDRO) (1990), *Mitigating Natural Disasters Phenomena, Effects & Options: A Manual for Policy Makers and Planners*, Geneva.

Annex 6: International Legal Sources of Housing Rights

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966), adopted by United Nations General Assembly (UNGA) resolution 2200A(XXI), 16 December 1966, entered into force on 3 January 1976, 133 States Parties as of December 1995. State compliance with the Covenant is monitored by the UN Committee on Economic, Social and Cultural Rights. Article 11(1) states:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and **housing and to the continuous improvement of living conditions**. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (1965), adopted by UNGA resolution 2106A(XX), entered into force on 4 January 1969, 138 States Parties as of January 1995. State Compliance with the Convention is monitored by the UN Committee on the Elimination of All Forms of Racial Discrimination. Article 5(e) (iii) states:

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

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (1979), adopted by UNGA resolution 34/180 on 18 December 1979, entered into force on 3 September 1981, 132 States Parties as of April 1994. State compliance with the Conven-

tion is monitored by the UN Committee on the Elimination of All Forms of Discrimination Against Women.

Article 14(2)(h) states:

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

INTERNATIONAL CONVENTION ON THE RIGHTS OF THE CHILD (1989), adopted by UNGA resolution 44/25 on 20 November 1989, entered into force on 2 September 1990, 176 States Parties as of November 1995. Compliance with this Convention is monitored by the UN Committee on the Rights of the Child. Article 27(3) states:

States Parties in accordance with national conditions and within their means shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and **housing**.

UNIVERSAL DECLARATION ON HUMAN RIGHTS (1948), adopted and proclaimed by United Nations General Assembly resolution 217A (III) on 10 December 1948. Article 25(1) states:

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

DECLARATION ON SOCIAL PROGRESS AND DEVELOPMENT (1969), proclaimed by UNGA resolution 2542(XXIV) on 11 December 1969. Part II, article 10 states:

Social progress and development shall aim at the continuous raising of the material and spiritual standards of living of all members of society, with respect for and in compliance with human rights and fundamental freedoms, through the attainment of the following main goals:...(f) **The provision for all, particularly persons in low-income groups and large families, of adequate housing and community services.**

DECLARATION ON THE RIGHTS OF DISABLED PERSONS (1975), proclaimed by UNGA resolution 3447 (XXX) of 9 December 1975. Article 9 states:

Disabled persons have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities. **No disabled person shall be subjected, as far as his or her residence is concerned, to differential treatment other than that required by his or her condition or by the improvement which he or she may derive therefrom.** If the stay of a disabled person in a specialized establishment is indispensable, the environment and living conditions therein shall be as close as possible to those of the normal life of a person of his or her age.

VANCOUVER DECLARATION ON HUMAN SETTLEMENTS (1976), adopted by the UN Conference on Human Settlements in 1976. Section III(8) and Chapter II (A.3) respectively state:

Adequate shelter and services are a basic human right which places an obligation on governments to ensure their attainment by all people, beginning with direct assistance to the least advantaged through guided programmes of self-help and community action. Governments should endeavor to remove all impediments hindering attainment of these goals. Of special importance is the elimination of social and racial segregation, *inter alia*, through the creation of better balanced communities, which blend different social groups, occupations, housing and amenities.

The ideologies of States are reflected in their human settlement policies. These being powerful instruments for change, they must not be used to dispossess people from their homes or land or to entrench privilege and exploitation. The human settlement policies must be in conformity with the declaration of principles and the Universal Declaration of Human Rights.

ILO RECOMMENDATION NO. 162 CONCERNING OLDER WORKERS (1980), adopted by the General Conference of the International Labour organisation on 23 June 1980. Article 5(g) states:

Older workers should, without discrimination by reason of their age, enjoy equality of opportunity and treatment with older workers as regards, in particular...**(g) access to housing, social services and health institutions, in particular when this access is related to occupational activity or employment.**

DECLARATION ON THE RIGHT TO DEVELOPMENT (1986), adopted by UNGA resolution 41/128 on 4 December 1986. Article 8(1) states:

States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, *inter alia*, equality of opportunity for all in their access to basic resources, education, health services, food, **housing**, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.