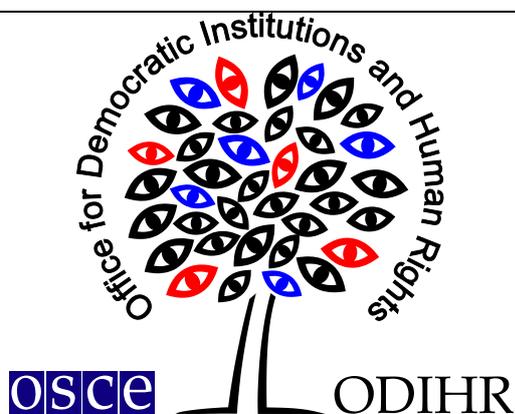


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OPINION

ON CERTAIN PROVISIONS OF THE DRAFT ACT ON LAND-USE PLANNING AND CONSTRUCTION OF THE SLOVAK REPUBLIC

*This Opinion has benefited from contributions made by
Mr. Paul E. Rabé and by Mr. Martin Vavrinčík, independent experts.*

**based on an English translation of excerpts from draft legislation provided by the
Ministry of Transport, Construction and Regional Development
of the Slovak Republic**

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I. INTRODUCTION

1. *On 23 July 2013, the Director of the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) sent a letter to the Permanent Representative of the Slovak Republic to the International Organizations in Vienna, requesting information relating to the draft Act on Land-Use Planning and Construction and on Amendments of Certain Acts (hereinafter “the Draft Building Act”) currently being developed in the Slovak Republic.*
2. *On 8 August 2013, the Permanent Representative of the Slovak Republic to the International Organizations in Vienna informed the OSCE/ODIHR that discussions were being organized between the Ministry of Transport, Construction and Regional Development, responsible for preparing the Draft Building Act, and the Ministry of Foreign and European Affairs to consider the impact of the draft legislation on Roma residents living in informal settlements in the Slovak Republic.*
3. *On 29 November 2013, the Permanent Representative of the Slovak Republic to the International Organizations in Vienna provided an explanatory statement drafted by the Ministry of Transport, Construction and Regional Development, which mentioned that “the Slovak Republic would welcome the genuine expertise provided by the international organizations”, including the OSCE/ODIHR.*
4. *On 25 February 2014, the Director General of the Construction Section of the Ministry of Transport, Construction and Regional Development of the Slovak Republic sent the English translation of certain provisions of the Draft Building Act to the Contact Point for Roma and Sinti Issues of the OSCE/ODIHR and asked for a legal opinion.*
5. *This Opinion was prepared in response to the request of 25 February 2014 from the Ministry of Transport, Construction and Regional Development of the Slovak Republic.*

II. SCOPE OF REVIEW

6. The scope of this Opinion covers only certain provisions of the Draft Building Act, submitted for review.¹ The Opinion does not address issues relating to the technical aspects of land use planning and building legislation and only analyzes the provisions of the Draft Building Act, in so far as they are relevant from a human rights perspective. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing property, land and housing rights in the Slovak Republic.
7. The Opinion raises key issues and provides indications of areas of concern. In the interests of concision, the Opinion focuses more on problematic areas rather than on the positive aspects of the Draft Building Act. The ensuing recommendations are based on relevant international standards and OSCE commitments, particularly pertaining to the right to adequate housing, with a specific focus on the respect and protection of the rights of the most vulnerable and marginalized groups, including the Roma community. Where appropriate, the Opinion will also seek to highlight good practices from other OSCE participating States in this field.

¹ The excerpts of the Draft Building Act sent to OSCE/ODIHR only include Articles 1 to 10, 14, 19, 20, 22, 25, 30, 47, 48, 60, 61, 64, 66, 68 to 70, 81 to 88, 93 to 96, 105, 108 to 110, 114, 136 to 142, 144 to 147, 157 to 160, 164, and 169 to 170.

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8. This Opinion is based on an English translation of certain provisions of the Draft Building Act provided by the Ministry of Transport, Construction and Regional Development of the Slovak Republic, which is attached to this document as an Annex. Errors from translation may result.
9. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion is without prejudice to any written or oral recommendations and comments related to policy and legislation regarding property, land and housing rights, as well as Roma rights and related human rights issues in the Slovak Republic, that the OSCE/ODIHR may make in the future.

III. EXECUTIVE SUMMARY

10. At the outset, the OSCE/ODIHR welcomes the willingness of Slovak authorities to seek international expertise to ensure compliance with international human rights standards and notes the Slovak Republic's efforts to amend its legal framework relating to land-use planning and construction to address the housing situation of Roma.
11. At the same time, the Draft Building Act would benefit from certain amendments. Notably, specific provisions should be added to ensure respect for the right to adequate housing, particularly of the most vulnerable and marginalized groups, with a specific focus on Roma, many of whom are living in so-called informal or illegal² dwellings³ in Slovakia.
12. In particular, the Draft Building Act should include separate provisions governing specifically the demolition of unauthorized buildings where this would amount to *de facto* evictions of persons residing there. It is important to ensure that adequate substantive and procedural safeguards are in place to protect the rights of the occupants of such buildings, in particular when they belong to vulnerable and marginalized communities. The Draft Building Act shall also explicitly provide that all walls or fencing that have been constructed for the purpose of or that have the effect of geographically segregating certain groups or communities shall be automatically regarded as unauthorized buildings, and thus demolished.
13. The drafting process should include a proper impact assessment and ensure full participation of all those who may be potentially affected by amendments to the Building Act, in particular the most vulnerable and marginalized groups. Clear, timely and comprehensive information to the public, as well as meaningful public participation and consultation procedures should also be in place throughout the land-use planning process, as well as during the ongoing process of amending the Draft Building Act.

² For the purpose of this opinion, the term "illegal" or "informal" in relation to a dwelling does not bear a negative connotation but merely refers to the situation where the dwelling was constructed without respecting formal procedures of legal ownership and regardless of development, planning and construction norms.

³ For the purpose of this opinion, a "dwelling" is understood as being any structure or part of a structure occupied as a person's home or as other living accommodation (whether the occupation is separate or shared with others), including temporary moveable structures such as tents, caravans, vehicles, vessels or other.

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14. The OSCE/ODIHR thus recommends as follows:

1. Key Recommendations

- A. to introduce special provisions in the Draft Building Act pertaining to the demolition of an “unauthorized dwelling serving as a home” and provide for mandatory substantive and procedural safeguards to be respected prior to the demolition, in particular that the decision can only be taken by a court which shall fully review the necessity and proportionality of the demolition and related eviction measures; [pars 68-89]
- B. to ensure that the evicted dweller has a right to effective remedies and fair compensation, and that both women and men from the same household are co-beneficiaries of all compensation packages; [pars 90-91]
- C. to expressly state in a new sub-paragraph under Article 68 of the the Draft Building Act that all walls or fencing financed or constructed by public authorities shall be regarded as unauthorized buildings, if they aim to, or have the effect of segregating or excluding certain residents or occupants, irrespective of their tenure rights, on the basis of their ethnic, national or social origin, and supplement the Draft Building Act, particularly Articles 69, 88 and 94, to provide for their demolition; [pars 44-45]
- D. to include, in the Draft Building Act, the obligation to inform the public in a clear, timely and comprehensive manner and ensure meaningful public participation and consultation procedures throughout the land-use planning process, while ensuring that the whole population, in particular the most vulnerable and marginalized groups, are, or continue to be fully consulted, informed, and able to submit their views during the process of amending the Draft Building Act; [pars 27, 42 and 46-48]

2. Additional Recommendations

- E. to supplement Article 22 of the Draft Building Act to expressly mention the principles of non-discrimination (especially with regard to race, ethnicity or nationality) and equality, and the need to take into account the needs of vulnerable persons; [par 35]
- F. to clarify and supplement Article 30 par 4 of the Draft Building Act as follows:
 - 1) to ensure that areas identified for “marginalized groups” of inhabitants in the municipal land use plan will not be located in isolated zones that may be far from, and/or lack proper transport and infrastructure connections with, “civic amenities” of the municipality as defined by par 6 of Article 30 of the Draft Building Act; [pars 36-37]
 - 2) to consider earmarking a certain proportion of the residential floor areas for affordable adequate housing, out of which a certain specified percentage could then be allocated to marginalized groups, and ensure that they are mixed with other residential areas; [pars 38-39]
 - 3) to ensure the integration of existing “informal settlements” into city systems, facilities and infrastructures; [par 40]

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- G. to supplement Article 22 par 3 and Article 30 of the Draft Building Act to ensure that the land use plans of municipalities address the issue of access and use of infrastructures by persons with disabilities; [pars 49-50]
- H. to prioritize local dispute resolution mechanisms to address dispute over land tenure rights to reach negotiated settlement agreements before resorting to expropriation, and ensure that sufficient funds will be allocated to provide for fair compensation to the expropriated owners; [pars 51-57]
- I. to simplify the requirements and procedures for obtaining a building permit (Articles 19 and 137 of the Draft Building Act) and for regularizing “unauthorized buildings” (Article 170 of the Draft Building Act), or alternatively provide certain financial and technical support to the most vulnerable and poor households and consider the creation of a separate legal regime for buildings located in “special zones”; [pars 40, 59-60 and 62]
- J. for land and housing experts, lawmakers and stakeholders in Slovakia, including the most vulnerable and marginalized:
 - 1) to ensure, if not done already, that strategic land use and housing planning and full impact assessment of the Draft Building Act is carried out ; [pars 24-26, 56 and 79]
 - 2) to review and discuss the variety of tenure systems and assess whether given the local context, more flexible forms of tenure systems should be adopted; [pars 31-33, and 53]
 - 3) to discuss the possible introduction of temporary special measures addressing the housing situation of Roma; [pars 29-30 and 59]
 - 4) to consider introducing systems of mixed land-use and more flexible policies for change of land and building use; [pars 43, 53 and 60] and
 - 5) to explore the possibility to introduce more flexible land transfer modalities as well as to redesign the rules governing housing allowance so that it is not linked to “legal” residency status. [par 54]

IV. ANALYSIS AND RECOMMENDATIONS

1. International Standards relating to the Right to Adequate Housing and Anti-Discrimination

- 15. Key general international human rights instruments applicable in Slovakia protect various aspects of housing rights, namely Article 11 par 1 of the UN International Covenant on Economic Social and Cultural Rights⁴ (hereinafter “the ICESCR”), Article 17 par 1 of the of the UN International Covenant on Civil and Political Rights⁵

⁴ The UN International Covenant on Economic, Social and Cultural Rights (hereinafter “the ICESCR”) was adopted by General Assembly resolution 2200A (XXI) on 16 December 1966. Slovakia succeeded to this Covenant on 28 May 1993. Article 11(1) of the ICESCR recognizes “the right of everyone to have an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions”.

⁵ The UN International Covenant on Civil and Political Rights (hereinafter “the ICCPR”) was adopted by General Assembly resolution 2200A (XXI) on 16 December 1966. Slovakia succeeded to this Covenant on 28 May 1993.

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(hereinafter “the ICCPR”) and Article 5(e)(iii) of the UN Convention on the Elimination of All Forms of Racial Discrimination⁶ (hereinafter “the CERD”).

16. The United Nations Committee on Economic, Social and Cultural Rights (hereinafter “the CESCR Committee”) stipulates that the right to adequate housing should be interpreted in a broad manner, as the right to live somewhere in security, peace and dignity.⁷ While the right to adequate housing does not require the State to build housing for the entire population,⁸ it obliges governments to put in place an enabling legal and regulatory framework and identify funding priorities to prevent homelessness, prevent forced evictions, address discrimination, focus on the most vulnerable and marginalized groups, ensure security of tenure to all, and guarantee that housing is adequate – including housing of the most vulnerable populations.⁹
17. In terms of general principles, “adequate housing” means more than just shelter alone, as defined by four walls and a roof. For housing to be considered “adequate”, it must, at a minimum, meet the following seven additional criteria defined by the CESCR Committee: (1) security of tenure; (2) availability of services, materials, facilities and infrastructure; (3) affordability; (4) habitability; (5) accessibility; (6) location; and (7) cultural adequacy.¹⁰ In that respect, it is acknowledged that *forced* evictions without the provision of, and access to, appropriate forms of legal or other protection¹¹ are considered *prima facie* incompatible with the requirements of the ICESCR; the prohibition does not, however, apply to evictions carried out by force in accordance with the law, that come with sufficient legal or other protection, and are in conformity with international human rights standards (see pars 69-88 *infra*).¹²
18. Additionally, Article 14(2)(h) of the UN Convention on All Forms of Discrimination against Women¹³ (hereinafter “the CEDAW”) provides that women in rural areas shall

⁶ The UN Convention on the Elimination of All Forms of Racial Discrimination (hereinafter “the CERD”) was adopted by General Assembly resolution 2106 (XX) on 21 December 1965. Slovakia succeeded to this Covenant on 28 May 1993.

⁷ See par 7 of the General Comment No. 4 of the CESCR Committee on the right to adequate housing (13 December 1991), available at <http://www.refworld.org/docid/47a7079a1.html> (hereinafter “the General Comment No. 4 of the CESCR Committee”).

⁸ See, with respect to the progressive realisation of housing rights, par 9 of General Comment No. 3 (1990) of the CESCR Committee. See also page 6 of the Factsheet No. 21 on the Right to adequate housing of the Office of the United Nations High Commissioner for Human Rights (hereinafter “the OHCHR”) and the United Nations Human Settlement Programme (hereinafter “UN-Habitat”), November 2009, available at http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf.

⁹ Ibid.

¹⁰ See par 8 of the General Comment No. 4 of the CESCR Committee. The seven criteria can be further detailed as follows: (1) security of tenure: a degree of tenure security that guarantees legal protection against forced evictions, harassment and other threats, with; (2) availability of services, materials, facilities and infrastructure: the housing occupants have safe drinking water, adequate sanitation, energy for cooking, heating, lighting, food storage or refuse disposal; (3) affordability: housing costs do not threaten or compromise the occupants’ enjoyment of other human rights; (4) habitability: housing guarantees physical safety or provide adequate space, as well as protection against the cold, damp, heat, rain, wind, other threats to health and structural hazards; (5) accessibility: the specific needs of disadvantaged and marginalized groups are taken into account; (6) location: housing is not cut off from employment opportunities, health-care services, schools, childcare centers and other social facilities, and is not located in polluted or dangerous areas; and (7) cultural adequacy: the way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing.

¹¹ See par 4 of the General Comment No. 7 on forced evictions of the CESCR Committee, UN doc E/C.12/1997/4 (1997), available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSm1BEDzFEovLCuWy8RFsH2WCpLaKB8oYEXouOuG6kzRZurHpInR8RPUqZiGGV%2fTAiXuC6DGGqWy0ZCHcXeSUZB0F69PhSJ0qHRgdg%3d> on page 113 (hereinafter “the General Comment No. 7 on forced evictions of the CESCR Committee”).

¹² See par 18 of the General Comment No. 4 on Adequate Housing of the CESCR Committee. See also pars 1 and 4 of the General Comment No. 7 on forced evictions of the CESCR Committee.

¹³ The UN Convention on the Elimination of All Forms of Discrimination against Women was adopted by General Assembly resolution 34/180 on 18 December 1979. Slovakia succeeded to this Convention on 28 May 1993.

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“enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications”. In that respect, in her 2012 report to the Human Rights Council, the UN Special Rapporteur on the right to adequate housing highlighted that adequate housing for women goes to the heart of social inequality and discrimination.¹⁴ Moreover, Article 27(3) of the Convention on the Rights of the Child¹⁵ (hereinafter “the CRC”) obliges states parties to provide, in cases of need, material assistance and support programmes, particularly with regard to housing.

19. At the Council of Europe (hereinafter “CoE”) level, while the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “the ECHR”)¹⁶ does not include a general right to housing, the European Court of Human Rights (hereinafter “the ECtHR”) has referred to Article 8 which protects the right of individuals to respect for their private life, family life and home as well as to Article 1 of Protocol No. 1 to the ECHR which guarantees the right to property. In particular, the ECtHR has recognised that the protection of Article 8 of the ECHR shall apply independently from the question of the lawfulness of the occupation under domestic law.¹⁷ Moreover, it has highlighted the obligation to secure shelter for particularly vulnerable individuals in exceptional cases,¹⁸ and paid special attention to the underprivileged status of certain groups when considering how to deal with unlawful settlements and, where removal of occupants was considered necessary, when deciding on timing, modalities and, if possible, arrangements for alternative shelter.¹⁹
20. Furthermore, still at the CoE level, Slovakia has accepted Article 16 of the European Social Charter on the right of the family to social, legal and economic protection which has been interpreted as including an obligation to promote and provide housing, extending also to security from unlawful eviction, and focusing on the needs of families and the adequacy of housing.²⁰ The CoE Committee of Ministers’ Recommendation Rec(2005)4 on improving the housing conditions of Roma and Travellers in Europe likewise includes a set of resolutions and guiding principles on housing policies and programs for Roma.²¹ Additionally, the CoE Commissioner for Human Rights has

¹⁴ See par 3 of the 2011 Report of the UN Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, UN Doc.A/HRC/19/53, 26 December 2011, available at http://www.ohchr.org/Documents/Issues/Housing/A-HRC-19-53_en.pdf.

¹⁵ UN Convention on the Rights of the Child (hereinafter “the CRC”), adopted by General Assembly resolution 44/25 on 20 November 1989. Slovakia succeeded to this Convention on 28 May 1993.

¹⁶ Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms, entered into force on 3 September 1953. Slovakia ratified this Convention on 18 March 1992.

¹⁷ See *McCann v. the United Kingdom*, ECtHR judgment of 13 May 2008 (Application No 19009/04), par 46, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=19009/04>["appno":"19009/04","itemid":"001-86233"].

¹⁸ See *Yordanova and others v. Bulgaria*, ECtHR judgment of 24 April 2012 (Application No 25446/06), par 130, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-110449#>["itemid":"001-110449"].

¹⁹ *ibid.* par 133.

²⁰ See *European Roma Rights Center v. Greece*, complaint No 15/2003, decision of the European Committee of Social Rights on the merits of 8 December 2004, par 24, available at http://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC15Merits_en.pdf.

²¹ Recommendation CM/Rec(2005)4 of the Committee of Ministers to CoE member states on improving the housing conditions of Roma and Travellers in Europe, adopted by the Committee of Ministers on 23 February 2005 at the 916th meeting of the Ministers’ Deputies, available at <https://wcd.coe.int/ViewDoc.jsp?id=825545>.

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provided a number of recommendations pertaining to the implementation of the right to housing of vulnerable groups, including Roma.²²

21. At the European Union (hereinafter “EU”) level, while the EU Charter of Fundamental Rights²³ does not include a specific right to housing, its Article 34 speaks of respect of the right to social and housing assistance. Key EU directives in the field of anti-discrimination also promote the implementation of the principles of equal treatment for access to housing²⁴ and a 2005 Resolution of the European Parliament on the Situation of Roma in the EU specifically calls on Member States to take concrete steps to bring about de-ghettoization, to combat discriminatory practices in providing housing and to assist individual Roma in finding alternative, sanitary housing.²⁵ In a subsequent Resolution, the European Parliament pointed out in particular the detrimental effect of substandard housing on the health of Romani women, and the fact that many Romani women live under threat of forced eviction.²⁶ The EU Framework for National Roma Integration Strategies up to 2020 also requests that Roma are provided with equal access to housing and public utilities.²⁷
22. In 2003, the OSCE participating States adopted the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area,²⁸ which aims at combating racism and discrimination against Roma and Sinti. In its Chapter IV on socio-economic issues, the OSCE Action Plan requires participating States to ensure that Roma and Sinti people enjoy social and economic rights on par with others and recommends a number of actions to address the housing and living conditions of Roma.²⁹ The Action Plan was supplemented by the Ministerial Council Decision No. 4/13 adopted in December 2013, which explicitly deals with the housing situation of Romani women.³⁰ As highlighted in

²² See Recommendation of the CoE Commissioner for Human Rights on the implementation of the right to housing, CommDH(2009)5, 30 June 2009, available at https://wcd.coe.int/ViewDoc.jsp?id=1463737#P393_69757, particularly section 4.3.5 on Roma and Travellers.

²³ Charter of Fundamental Rights of the European Union (OJ C 83, 30 March 2010, page 389), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF>.

²⁴ Article 3(1) of the Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial and ethnic origin (hereinafter the “EU Racial Equality Directive”). See also Council Directive 2004/113/EC of 13 December 2004 on equal treatment between men and women in the access to and supply of goods and services (hereinafter the “EU Gender Equality Directive”).

²⁵ See the European Parliament’s Resolution P6_TA(2005)0151 of 28 April 2005 on the Situation of Roma in the EU, OJ C 45 E, 23.2.2006, p. 129, available at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2005-0151&language=EN>.

²⁶ See the European Parliament’s Resolution P6_TA(2006)0244 of 1 June 2006 on the Situation of Roma Women in the EU, OJ C 45 E, 23.2.2006, p. 129, available at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2006-0244&language=EN&ring=A6-2006-0148>.

²⁷ See page 7 of the EU Framework for National Roma Integration Strategies up to 2020, COM(2011) 173, 5 April 2011, available at http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf.

²⁸ OSCE Ministerial Council Decision MC.DEC/3/03 on Improving the Situation of Roma and Sinti within the OSCE Area, available at <http://www.osce.org/odihr/17554?download=true>. See also OSCE Ministerial Council Decision MC.DEC/6/08 on enhancing OSCE efforts to implement the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area, available at <http://www.osce.org/mc/35488?download=true>.

²⁹ These include in particular: putting in place mechanisms and institutional procedures to clarify property rights, resolve questions of ownership and regularize the legal status of Roma and Sinti people living in circumstances of unsettled legality (par 43); involving Roma and Sinti people in the design of housing policies, as well as in the construction, rehabilitation and/or maintenance of public housing projects meant to benefit them (par 44); ensuring that housing projects do not foster ethnic and/or racial segregation (par 44); considering the possibility of guaranteeing loans to participating States that may be available from international organizations and financial institutions for low-income housing projects (par 45); and promoting the option of co-operative housing schemes for Roma communities and providing appropriate training for the maintenance of such facilities (par 46).

³⁰ Available at <http://www.osce.org/mc/109340?download=true>. See also the 2011 Belgrade Declaration of the OSCE Parliamentary Assembly, Resolution on promoting policies in favour of the Roma population, 10 July 2011, available at

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the 2013 Status Report on the implementation of the 2003 OSCE Action Plan, social housing legislation for vulnerable groups is a prerequisite to establishing long-term support mechanisms to improve living conditions of Roma. Major steps need to be taken to ensure the regularization of Roma settlements and reverse the dangerous trend of segregation and ghettoization.³¹

2. General Comments

2.1. Strategic Land Use and Housing Planning

23. At the outset, it should be noted that the attempts of Slovakia to amend its legislation to take into account the rights and realities of Roma and other vulnerable groups are most welcome, and are based on intensive policy discussions with various stakeholders in the country. The ensuing paragraphs aim to assist in this process, by providing a list of relevant standards and principles that may prove beneficial in this context.
24. In this regard, it is reiterated that land tenure and property rights need to be understood within their broader political, institutional, legal, economic, social, cultural and historical context. Proper assessment and strategic plans are needed to ensure that local land use and housing plans are flexible and responsive to market fluctuation as well as social needs.³² In particular, planning needs to be realistic and, should take into consideration the special phenomenon of dwellings lacking security of tenure, by allocating sufficient financial and other resources, to enhance the situation of the most disadvantaged groups in society.³³
25. The key principles that Slovakia committed to in its future work on housing (i.e., de-stigmatization, desegregation and de-ghettoization)³⁴ and the goals set down in the section on housing of the Slovak National Roma Integration Strategy³⁵ will serve as useful guidance when discussing amendments to the Draft Building Act. This also includes policy recommendations made by certain international or regional organizations, e.g. the World Bank Policy Advice on the Integration of Roma in the Slovak Republic, particularly the section on housing, which recommends focusing on improving living conditions for poor households *in situ* (i.e., upgrading, see e.g. par 40 and 53 *infra*) and helping poor families move into better and integrated housing.³⁶ The

<http://www.osce.org/odihr/81072?download=true>, which recommends that changes are made in the state policies relating to Roma, including policies on housing.

³¹ See pages 32-33 of the 2013 Status Report of the OSCE/ODIHR on the Implementation of the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, available at <http://www.osce.org/odihr/107406?download=true>.

³² See e.g. pages 60-61 of the Study by the Network of Associations of Local Authorities of South East Europe (NALAS) on “Challenges of Regularization of Informal Settlements in South East Europe: Overview of the Relevant Urban Planning and Legalization Laws and Practice”, available at <http://www.pur.rs/en/publication/10/challenges-of-regularization-of-informal-settlements-in-south-east-europe>.

³³ See pages 48-49 of EU Agency for Fundamental Rights (FRA), “Housing Conditions of Roma and Travellers in the European Union – Comparative Report”, October 2009, available at http://fra.europa.eu/sites/default/files/fra_uploads/608-ROMA-Housing-Comparative-Report_en.pdf.

³⁴ See page 29 of the 2013 Status Report of the OSCE/ODIHR on the Implementation of the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, available at <http://www.osce.org/odihr/107406?download=true>.

³⁵ Available at http://ec.europa.eu/justice/discrimination/files/roma_slovakia_strategy_en.pdf, page 37. See also the European Commission assessment on the progress made by Slovakia in the implementation of the National Roma Integration Strategies (2014), available at http://ec.europa.eu/justice/discrimination/files/country_assessment_2014/slovakia_en.pdf.

³⁶ See section 6.4.1 of the World Bank Diagnostics and Policy Advice on the Integration of Roma in the Slovak Republic (2012), available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/10/03/000333038_20121003031058/Rendered/PDF/729850ESW0Whit0port09Sept20120Final.pdf. Such policy recommendations relevant for this Opinion include e.g.

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2013 UN Guiding Principles on Security of Tenure for the Urban Poor³⁷ may help ensure the adoption of a human rights-based approach in this context.

26. Should this not have taken place already, it would be advisable to conduct a full impact assessment of planned legislation, including a gender, social and financial impact assessment, addressing specifically the impact of such laws on marginalised Roma.³⁸ A look at the financial consequences of the new legislation should cover the financial and human costs relating to eviction, expropriation and destruction of dwellings.
27. Moreover, given the impact of the Draft Building Act on the whole population, it is crucial that all those who may be potentially affected by the Draft Building Act, in particular the most vulnerable and marginalized groups, are, or continue to be fully consulted, informed, and able to submit their views prior to the completion of such legislation, procedures and mechanisms. Public discussion and an open and inclusive debate will increase all stakeholders' understanding of the various factors involved and enhance confidence in the adopted legislation.

2.2. Addressing the Specific Needs of Roma Communities in Slovakia

28. According to the Atlas of Roma Communities (2013)³⁹, in Slovakia, there are currently 804 identified marginalized Roma concentrations in 584 municipalities with 21,168 dwellings, out of which 8,801 are not registered in the Cadastral Registry and supposedly would qualify as “unauthorized buildings” according to the Draft Building Act. The UNDP/World Bank/EC regional Roma survey (2011)⁴⁰ further shows that 55% of Roma surveyed live in households without an indoor toilet, kitchen or shower, or electricity.⁴¹
29. The European Committee of Social Rights noted that the criteria for regularisation of so-called illegal or informal dwellings often fail to take into account the specificity of the living conditions of Roma, which are also a consequence of a long-standing failure of states to address their specific housing needs.⁴² This may have an indirectly discriminatory effect on members of this community. As in other countries in the region, in Slovakia, the lack of affordable rental housing, limited access to housing finance and discrimination, all combined, *de facto* limit the ability of Roma households to access housing or improve housing conditions. At the same time, the number and size of Roma slums is growing due to rapid population increase and because of evictions, the inability to afford alternative housing, and, at times, discrimination and prejudice.⁴³ Thus, the CERD Committee, in its 2013 Concluding Observations, recommended that

the incorporation of unregulated (or informal) areas into city/village plans; tri-partite negotiation between land owner, local authorities and occupants; introducing municipal land swapping possibilities; the possibility to register tenure irrespective of the type of structure (supposedly even if non-compliant with the building legislation).

³⁷ UN Guiding Principles on Security of Tenure for the Urban Poor (A/HRC/25/54), 30 December 2013, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/25/54.

³⁸ See par 12 of the Concluding Observations of the CERD Committee on the combined 9th and 10th Reports of Slovakia (2013), available at http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-SVK-CO-9-10_en.pdf.

³⁹ Atlas of Roma Communities 2013, Preliminary Results (available only in Slovak), http://www.minv.sk/?atlas_2013.

⁴⁰ Available at <http://cps.ceu.hu/news/2012-10-16/undpworld-bankek-regional-roma-survey-2011>.

⁴¹ See Peric, Tatjana (2013), The Housing Situation of Roma Communities: Regional Roma Survey 2011. Roma Inclusion Working Papers. Bratislava: UNDP, page 41, available at <http://www.scribd.com/doc/154052894/The-housing-situation-of-Roma-communities>.

⁴² See pars 55-56 of ECSR Decision on the Merits, *ERRC v. Bulgaria*, Collective Complaint No. 31/2005, 18 October 2006, available at http://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC31Merits_en.pdf.

⁴³ *Op. cit.* footnote 36, page 125 (2012 World Bank Diagnostics and Policy Advice on the Integration of Roma in the Slovak Republic).

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Slovakia consider the introduction of urgent temporary special measures to promote economic, social and cultural rights of Roma.⁴⁴

30. The new provision under Article 47 of the Draft Building Act on expropriation is positive in this regard as it aims to address the issue of potential conflict over land rights. At the same time, it is doubtful whether this is sufficient to address the security of *housing* tenure. In particular, it may be difficult for many Roma to regularize “unauthorized buildings” serving as homes, given the complexity and costs associated with the regularisation process (see par 62 *infra*). Perhaps, additional special measures should be considered by authorities and Roma counterparts, to address this particular issue (see pars 40, 59 and 62 *infra*).⁴⁵

2.3. Need for Diverse Tenure Systems

31. When confronted with the phenomenon of informal development, many governments in the OSCE region focus on the “problem of unlawful construction”, meaning that they demolish buildings that were not established in conformity with relevant legislation, and as a consequence evict occupants of such buildings. This approach often does not look at the nature and causes of establishing such “informal” housing. Indeed, informal development is a consequence of the historic and socio-economic conditions and not simply a legal, planning or administrative error.⁴⁶ Most homeowners across the region, including members of the Roma community, do not choose to live in informal circumstances but are often the victims of real or perceived overly bureaucratic urban planning and development regulations, and complex regulations and technical requirements for obtaining a building permit. Such regulations reduce the supply of urban, developable land and represent a disincentive to legalize properties.⁴⁷
32. As regards property, land and housing rights, research and experience have shown the limitation of policies focused solely on “private property ownership” which was originally perceived as the ideal or ultimate form of tenure.⁴⁸ Policies which emphasize and encourage freehold (i.e. property ownership) may unintentionally or inadvertently prevent policy-makers from exploring other forms of tenure (e.g., possession rights, use/occupancy rights, rental, collective and transitional land tenure arrangements, and other hybrid tenure models) which may be more appropriate for large sections of the

⁴⁴ *Op. cit.* footnote 38, par 10 (2013 CERD Committee Concluding Observations on Slovakia).

⁴⁵ Such special measures should comply with the guidance provided in General recommendation No 32 (2009) on the meaning and scope of special measures in the ICERD, available at http://www2.ohchr.org/english/issues/racism/groups/docs/8thsession/CERD_GC32.doc.

⁴⁶ *Op. cit.* footnote 32, page 92 (Study by NALAS on Challenges of Regularization of Informal Settlements in South East Europe).

⁴⁷ See e.g. pages 50-51 of the OSCE/ODIHR Best Practices for Roma Integration (hereinafter “BPRI”) Project: Regional Report on Housing Legalization, Settlement Upgrading and Social Housing for Roma in the Western Balkans (2014), available at http://bpri-odihr.org/single-news/items/Housing_report.html?file=tl_files/new/Housing%20Report/ENG.pdf.

⁴⁸ See pars 103-110 of the Research Paper “Holding On: Security of Tenure – Types, Policies, Practices and Challenges” (2012) prepared by Geoffrey Payne and Alain Durand-Lasserve for the UN Special Rapporteur on adequate housing (hereinafter “2012 Research Paper on Security of Tenure for the UN Special Rapporteur”), available at <http://www.ohchr.org/Documents/Issues/Housing/SecurityTenure/Payne-Durand-Lasserve-Back-groundPaper-JAN2013.pdf>. See also par 35 of 2012 Report on Security of Tenure of the UN Special Rapporteur on adequate housing, A/HRC/22/46 (hereinafter “2012 Report on Security of Tenure of the UN Special Rapporteur on adequate housing”), available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/AHRC2246_English.pdf. See also the example of Albania, page 13 of the Report by Arlind Rama published by Friedrich-Ebert-Stiftung on “Property Rights Issues in Albania: Challenges and Perspectives” (March 2013) (hereinafter “2013 Report on Property Rights Issues in Albania”), available at <http://library.fes.de/pdf-files/bueros/albanien/10052.pdf>.

population.⁴⁹ More specifically, other more flexible forms of tenure systems have proven to be quite effective in the long run, by adopting pragmatic, pluralistic and incremental means of integrating informal settlements into land and housing markets,⁵⁰ while guaranteeing secure tenure for the most vulnerable.⁵¹

33. Based on the above practice, it may be preferable to allow for a variety of tenure systems simultaneously, which would help ensure greater security of tenure for all segments of society.⁵² Such more diverse tenure systems (e.g., possession rights, use/occupancy rights, rental, freehold, collective and transitional land tenure arrangements, and other hybrid tenure models)⁵³ should be discussed by all relevant stakeholders, including the most vulnerable and marginalized, with a view to assessing which models could be adopted in Slovakia.⁵⁴ Finally, when regulating the legalization of properties, care should be taken to prevent sudden price increases resulting from such regularization, which could again lead to evictions of occupants who are not able to pay such prices.⁵⁵

3. Inclusive and Participatory Land-Use Planning

3.1. Integrated Development and Desegregation

34. As regards land-use planning, Article 22 of the Draft Building Act notes that the main task of planning authorities is to “regulate the territorial development by determination of the overall plan for development and organisation of a territory and to systematically and comprehensively address the spatial arrangement and functional use of land”. The main purpose of such regulation is to create a “quality settlement environment and conditions for sustainable territorial development, construction, territorial cohesion, social cohesion, conservation and improvement of the environment and harmonisation of all activities in a territory”.
35. It is welcome that the principle of “social cohesion” is expressly stated as one of the goals of land-use planning and one of the main tasks of land-use planning authorities (Article 22 par 3 of the Draft Building Act). However, certain key principles which are of particular relevance for Roma communities should also be expressly mentioned in this provision, such as the principles of non-discrimination (especially with regard to race, ethnicity or nationality) and equality. Moreover, Article 22 of the Draft Building

⁴⁹ *ibid.* par 110 (2012 Research Paper on Security of Tenure for the UN Special Rapporteur). See also *ibid.* pars 82-83 (2012 Report on Security of Tenure of the UN Special Rapporteur on adequate housing).

⁵⁰ See pars 11-22 of the UN Guiding Principles on Security of Tenure for the Urban Poor. See also the “Guidelines for Improvement and Legalization of Roma Informal Settlements in Serbia”, signed by the Serbian government in 2007 (available at

<http://www.europarl.europa.eu/document/activities/cont/201011/20101126ATT01550/20101126ATT01550EN.pdf>). On the limitations of policies focused solely on individual private property ownership, see also *op. cit.* footnote 48, pars 61 and 91-94 (2012 Research Paper on Security of Tenure for the UN Special Rapporteur).

⁵¹ *Op. cit.* footnote 48, par 85 (2012 UN Special Rapporteur Report on Security of Tenure). See also *op. cit.* footnote 48, par 95 (2012 Research Paper on Security of Tenure for the UN Special Rapporteur).

⁵² *ibid.* pars 58-61 (2012 UN Special Rapporteur Report on Security of Tenure).

⁵³ *Op. cit.* footnote 37, pars 11-21 (2013 UN Guiding Principles on Security of Tenure for the Urban Poor). For examples of a variety of short, medium and long-term tenure options, and their advantages and disadvantages, see *op. cit.* footnote 48, Appendix C on pages 62-68 (2012 Research Paper on Security of Tenure for the UN Special Rapporteur). See also the 2013 Report on Rental and Collective Housing of the UN Special Rapporteur on adequate housing, A/68/289, 7 August 2013, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N13/421/84/PDF/N1342184.pdf?OpenElement>.

⁵⁴ *Op. cit.* footnote 48, pars 112-116 (2012 Research Paper on Security of Tenure for the UN Special Rapporteur).

⁵⁵ See par 31 of the UN Guiding Principles on Security of Tenure for the Urban Poor. See also *op. cit.* footnote 48, pars 85-87 (2012 UN Special Rapporteur Report on Security of Tenure).

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Act could also make special mention of the need to take into account the needs of vulnerable persons.

36. One of the main tasks assigned to land-use planning authorities is specifically the “creation of local conditions for removal of negative consequences of economic changes”. Article 30 par 4 of the Draft Building Act further provides that “the proposal [for the functional use of the municipality area] shall indicate areas for marginalized groups of inhabitants within housing areas”, without further indication. It is unclear from the excerpt of the Draft Building Act how these “marginalized groups” of inhabitants are defined and identified, and this may pose some difficulties when implementing the legislation.
37. Moreover, it would also be helpful, to prevent *de facto* segregation of certain groups such as Roma, if Article 30 par 4 of the Draft Building Act, or implementing sub-legal norms, would help ensure that areas identified for “marginalized groups” of inhabitants in the municipal land use plan will not be located in isolated zones that may be far from, and/or lack proper transport and infrastructure connections with, “civic amenities” of the municipality as defined by par 6 of Article 30 of the Draft Building Act. This would be very much in line with EU recommendations, which promote the integration of socially and economically vulnerable population groups, including Roma, into the majority population and urge states to avoid and combat policies or initiatives aimed at the creation of ghettos and segregation of such groups.⁵⁶ Such preventive action is very important to avoid further isolation, and guarantee access to employment opportunities, schooling, and mainstream civic life.⁵⁷
38. Generally, international standards and good practices advocate for inclusive urban planning. This would ensure that well-located and adequate housing is available to the poor (e.g., by requiring that a proportion of neighbourhood property be allocated to low-income dwellings); if combined with a mandate to maintain such housing at an affordable level over time, it can provide adequate housing for the urban poor.⁵⁸ Good practices in terms of sustainable neighbourhood planning suggest that establishing a certain percentage of housing (e.g. 20 to 50 per cent of the residential floor area distributed to low cost housing, with each tenure type being no more than 50 per cent of the total area) as “affordable” could help ensure equitable urban opportunities; such systems have been implemented successfully in several countries in the European Union.⁵⁹
39. Such approach could perhaps also be envisaged for residential floor areas of building blocks or neighbourhoods in Slovakia, particularly for new housing development projects. Within the affordable areas, a certain specified percentage could then be allocated to marginalized groups. It may be advisable to amend Article 30 par 4 of the Draft Building Act to specify that these areas shall be mixed with other residential areas (instead of being located “*within* housing areas”), to avoid the creation of segregated settlements. The same should apply as regards the location of publicly financed or

⁵⁶ See par 19 of the Resolution P6_TA (2005) 0151 of the European Parliament and par 5 of the Recommendation Rec(2005)4 of the CoE Committee of Ministers on improving the housing conditions of Roma and Travellers in Europe.

⁵⁷ *Op. cit.* footnote 38, par 12 (2013 CERD Committee Concluding Observations on Slovakia), which explicitly speaks of the need to promote the Roma community’s right to adequate housing and to end spatial segregation. See also *op. cit.* footnote 31, page 29 (2013 OSCE/ODIHR Status Report on the Implementation of the Action Plan on Roma and Sinti).

⁵⁸ *Op. cit.* footnote 37, par 46 (2013 UN Guiding Principles on Security of Tenure for the Urban Poor).

⁵⁹ See Principle 4 of UN-Habitat New Strategy of Sustainable Neighbourhood Planning (2013), available at http://www.masshousingcompetition.org/sites/default/files/5_principles.pdf.

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owned investments, e.g. for the construction of public social housing.⁶⁰ This would be in line with the recommendations made by the World Bank in that area, which involve seeking integrated approaches and supporting physical, social and economic inclusion.⁶¹

40. As regards existing “informal settlements”,⁶² the UN Guiding Principles on Security of Tenure for the Urban Poor recommend their integration into city systems, facilities and infrastructures, e.g., by designating them as “special zones” with regulations allowing for their incremental upgrading; these zones may be subject to a legal regime separate from that of general land-use and construction norms.⁶³ Article 30 of the Draft Building Act could be amended accordingly, and should then also determine which government authority should develop the respective regulation on incremental upgrading.
41. Successful examples of integrating both informal and formal urbanization have also adopted some of the following principles, e.g.:⁶⁴
- all real estate owners should be included in the tax system, whether they are officially registered or not;
 - informal building owners must contribute to the costs of local and general urban development;
 - most of the revenue from fees and fines should be implemented locally;
 - information about the principles and regulations mentioned above must be transparent and widely accessible.

The Draft Building Act and other relevant legislation could be amended to reflect some of the above principles.

42. Additionally, a participatory approach, ensuring meaningful involvement of the most vulnerable communities, including Roma, for the development of the local land use plan should ensure that the choices made reflect their realities and needs, as well as their (possibly differing) views on the attractiveness and feasibility of housing integration with the mainstream population (see additional comments on a participatory approach in pars 46-48 *infra*).⁶⁵
43. As regards land-use zoning, the provisions of the Draft Building Act seem to provide for single-function use of certain specified zones, with the change of land use obeying relatively strict rules (Articles 7 and 30 of the Draft Building Act). In this context, it has been recognized that strict land use regulations and burdensome change-of-use procedures, may create a highly complex system which may constitute a barrier to

⁶⁰ In Slovakia, public social housing projects are regulated by the Act No. 443/2010 Coll. on Housing Development Subsidies and on Social Housing (as amended) and the Act No. 150/2013 Coll. on State Housing Development Fund.

⁶¹ *Op. cit.* footnote 36, page 133 (2012 World Bank Diagnostics and Policy Advice on the Integration of Roma in the Slovak Republic).

⁶² See footnote 2 for the definition of the term “informal settlement” for the purposes of this opinion; see also the Vienna Declaration on National and Regional Policy and Programmes regarding Informal Settlements in South Eastern Europe, signed in Vienna on 28th September 2004, available at http://www.stabilitypact.org/housing/f%20-%20050415_Vienna%20Declaration.pdf.

⁶³ *Op. cit.* footnote 37, par 28 (2013 UN Guiding Principles on Security of Tenure for the Urban Poor).

⁶⁴ *Op. cit.* footnote 32, page 14 of the Executive Summary (Study by NALAS on Challenges of Regularization of Informal Settlements in South East Europe).

⁶⁵ See e.g. *op. cit.* footnote 47 (OSCE/ODIHR BPRI Project: 2014 Regional Report on Housing Legalization), which shows that there is no one-size-fits-all model: on the one hand, many individual Roma families deliberately seek integration with the mainstream population in their housing choices and seek to partake of social housing, where they are eligible; while on the other hand, certain settled Roma communities may prefer to continue to reside in their settlement not necessarily integrated with the mainstream population.

solving the issue of informal dwellings.⁶⁶ Good practices in terms of sustainable neighbourhood planning designed to address challenges such as poverty and inequality, tend to favour systems of mixed land-use and flexible policies allowing for easier change of land and building use.⁶⁷ It may be helpful to consider applying some of these modalities (e.g. mixed land-use zoning, facilitating the change of land use without the need for planning permissions, or authorizing the temporary use for residential purposes of certain public and even private abandoned buildings)⁶⁸ in the local Slovakian context, by introducing them into the Draft Building Act and possibly related legislation.

44. Finally, to avoid recent situations involving the financing and construction of walls to separate Roma settlements from the rest of the population in future and provide a clear legal basis for the destruction of already existing structures,⁶⁹ Article 68 of the Draft Building Act on unauthorized building should be supplemented by adding an additional sub-paragraph. This provision should expressly state that all walls or fencing financed or constructed by public authorities shall be regarded as unauthorized buildings, if they aim to, or have the effect of segregating or excluding certain residents or occupants, irrespective of their tenure rights, on the basis of their ethnic, national or social origin. This would provide a clear legal basis for the demolition of such walls or fences.
45. To avoid possible conflicts of interest within a municipality, Article 94 of the Draft Building Act should expressly grant the power to order such demolition to a higher-level authority, such as the building inspectorate. Articles 69 and 88 of the Draft Building Act should likewise explicitly state that the building inspectorate shall order the developer (supposedly the municipality) to demolish the unauthorized wall or fencing. The Draft Building Act should also provide specific proceedings for this purpose since the existing draft provisions do not address this situation.

3.2. Participatory Land-Use Planning

46. In most legal systems, participatory procedures are established to increase the legal security of citizens in the planning process.⁷⁰ This should in particular include the obligation to inform the public in a clear, timely and comprehensive manner and ensure meaningful public participation and consultation procedures throughout the land-use planning process.
47. Unless such processes are regulated elsewhere, it would be advisable to amend Article 22 of the Draft Building Act to expressly state that land-use planning authorities should

⁶⁶ See e.g. *op. cit.* footnote 48, page 10 (2013 Report on Property Rights Issues in Albania). See also *op. cit.* footnote 48, par 111 (2012 Research Paper on Security of Tenure for the UN Special Rapporteur).

⁶⁷ See Principle 5 of UN-Habitat New Strategy of Sustainable Neighbourhood Planning (2013), available at http://www.masshousingcompetition.org/sites/default/files/5_principles.pdf. See also *op. cit.* footnote 32, pages 60-61 of the Executive Summary (Study by NALAS on Challenges of Regularization of Informal Settlements in South East Europe).

⁶⁸ See for instance the on-going parliamentary debate in the United Kingdom regarding the “change of use” system and the identification of cases where certain changes of use are allowed without requiring planning permission, Briefing Paper “Planning: Change of Use System”, 6 May 2014, available at <http://www.parliament.uk/briefing-papers/sn01301.pdf>

⁶⁹ *Op. cit.* footnote 38, par 16 (2013 CERD Committee Concluding Observations on Slovakia). See also page 29 of the 2013 Status Report of the OSCE/ODIHR on the Implementation of the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, available at <http://www.osce.org/odihr/107406?download=true> and Recommendation No. 110.141 made by Spain during the 2nd cycle of the Universal Periodic Review of Slovakia (acceptation status pending as of 15 May 2014), Report of the Working Group on the Universal Periodic Review, A/HRC/26/12, 26 March 2014, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session18/SK/A_HRC_26_12_Slovakia_E_iDroits.doc.

⁷⁰ See e.g. *op. cit.* footnote 32, pages 70-72 (Study by NALAS on Challenges of Regularization of Informal Settlements in South East Europe).

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ensure the information, participation and consultation of the public,⁷¹ including the most vulnerable and marginalized groups, within the scope of their respective competences. Furthermore, Article 30 of the Draft Building Act (or other relevant provisions of the Draft Building Act pertaining to consultation of the public) should also detail further the modalities of participatory land-use planning processes to ensure such participation and consultation at the local level. This would necessarily involve the obligation to make information relating to land-use planning, including land use planning documents, aims, and consequences, public and accessible to all, in a clear, timely and comprehensive manner.⁷² Individuals must also be given sufficient time to respond to plans and intentions in order to protect or ensure the realization of their interests. A proper outreach and information strategy is particularly important in the case of Roma populations, whose access to official information may be limited due to lack of education and adequate communication channels. The UN Guiding Principle on Security of Tenure for the Urban Poor No. 9 may provide useful guidance in this context.⁷³

48. Given that land-use plans may ultimately also serve as a potential basis for pronouncing evictions, the guidance provided by the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement⁷⁴ as it relates to information, participation and consultation, may also serve as useful reference for the drafters in that respect.

3.3. Accessibility for People with Disabilities

49. It is welcome that the Draft Building Act addresses the issue of access and use of buildings by persons with disabilities (Articles 60, 61, 66, 94, 108, 141 and 164). However, the requirements for accessibility provided for by the UN Convention on the Rights of Persons with Disabilities (hereinafter “CRPD”)⁷⁵ appear to be broader than the ones contemplated by the Draft Building Act. With a view to enabling persons with disabilities “to live independently and participate fully in all aspects of life”, Article 9 of the CRPD calls on States to take measures to ensure to such persons access not only to facilities and services open to the public, but also to transportation, information and communication. Consequently, the relevant provisions should aim to address access to infrastructure in general, e.g. the urban design of the town, street furniture, pathways, pedestrian crossings, and other issues,⁷⁶ so that all new projects are in accordance with

⁷¹ See also pars 16.2 and 20.2 of the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land (2012), available at <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.

⁷² See e.g. *op. cit.* footnote 32, pages 62, 70-71 (Study by NALAS on Challenges of Regularization of Informal Settlements in South East Europe).

⁷³ See UN Guiding Principle No. 9 on Empowering the Urban Poor and Holding States Accountable and pars 76-79 of the Commentary to the UN Guiding Principles on Security of Tenure for the Urban Poor. See also Recommendation CM/Rec(2001)19 of the CoE Committee of Ministers on the participation of citizens in local public life, adopted on 6 December 2001, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=871858&SecMo de=1&DocId=234770&Usage=2>.

⁷⁴ See pars 37-39 of the Annex I to the 2007 Report of the UN Special Rapporteur on adequate housing on “Basic Principles and Guidelines on Development-Based Evictions and Displacement” (hereinafter “2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement”), A/HRC/4/18, 5 February 2007, available at http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf.

⁷⁵ United Nations Convention on the Rights of Persons with Disabilities, adopted by General Assembly resolution 61/106 on 13 December 2006. Slovakia ratified both the Convention and its Protocol on 26 May 2010.

⁷⁶ See e.g. as good practice the “Designed Manual for a Barrier Free Environment”, available on the website of UN Enable <http://www.un.org/esa/socdev/enable/designm/index.html>.

the principles of universal design.⁷⁷ The issue of accessibility should also be addressed within the section on the Land-Use Plan of the Municipality, and not just under the section on Construction of Buildings. It is recommended to supplement Article 22 par 3 and Article 30 of the Draft Building Act to that effect.

50. It is also worth mentioning that the States parties to the CRPD are obliged to ensure that persons with disabilities have access to the existing (not only the new) physical environment and transportation, information and communication, and public services. If not already provided for in existing legislation, the drafters should consider adding such an obligation to the Draft Building Act, complete with definite time frames and adequate resources to ensure the removal of existing barriers.⁷⁸ Legislation should provide for the mandatory application of accessibility standards and for sanctions, including fines, for those who fail to apply them.⁷⁹

4. Resolving Disputes over Land Tenure Rights

4.1. Dispute Resolution Mechanisms

51. In its jurisprudence, the ECtHR has held that the positive obligation of States to protect property rights continues to exist in cases involving litigation between private entities. For example, States are required to take concrete measures to put in place a judicial mechanism for settling effectively property disputes and to ensure that such a mechanism complies with the material and procedural safeguards enshrined in the Convention.⁸⁰
52. In that respect, non-judicial remedies can sometimes have more far-reaching effects and provide solutions to larger numbers of people in a shorter time-frame than court procedures, which are often more burdensome and time-consuming.⁸¹ The UN Guiding Principles on Security of Tenure for the Urban Poor thus recommend the establishment, in consultation with communities, of a local dispute resolution mechanism to address disputes over tenure rights.⁸² The Draft Building Act could be supplemented to include such a mechanism, or make reference to legislation relating to alternative dispute settlements, as applicable.
53. Notably, good practices have shown that multi-partite negotiations leading to negotiated settlement agreements between the land owner, the local authorities and the dwellers of the informal settlement (and potentially civil society organizations and business entities) often yield positive results. In such situations, a combination of different *in situ* tenure solutions⁸³ may help find the right balance between the protection of the property rights

⁷⁷ See par 15 of General Comment No. 2 of the CRPD Committee on Article 9 on Accessibility available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/2&Lang=en.

⁷⁸ *ibid.* par 24.

⁷⁹ *ibid.* par 28.

⁸⁰ See *Sierpinski v. Poland*, ECtHR judgment of 3 November 2009 (Application no. 38016/07), par 69, available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-95590#{"itemid":"001-95590"}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-95590#{).

⁸¹ See e.g. though in the context of return of refugees and internally displaced persons, but as comparison, page 67 of the Handbook on Housing and Property Restitution and Displaced Persons (2007), available at http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf.

⁸² *Op. cit.* footnote 37, par 35 (2013 UN Guiding Principles on Security of Tenure for the Urban Poor). See also par 4.9 of the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land (2012), available at <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.

⁸³ *Op. cit.* footnote 37, par 27 (2013 UN Guiding Principles on Security of Tenure for the Urban Poor) which refers to the recognition of adverse possession rights; rental of the property by the owner at affordable rates and with legal tenancy protections; sale of the property with State support where necessary; land sharing that allocates sufficient land to the

of the land owner and the rights of the occupant of the informal settlement. However, this would only be possible if flexible change of land use or building use procedures and different forms of tenure exist (see pars 31-33 *supra*).

54. Legislation pertaining to public land and properties should also allow more flexible land transfer modalities, including the privatization of public land, facilitating the purchase of land from private owners and land swapping among owners.⁸⁴ Moreover, if not already addressed in policy documents and existing legal framework, additional options such as sites-and-services (i.e., cases where land, infrastructure and services are provided to low-income recipients, who build their houses themselves) could also be further explored, as well as an increase in micro-financing for home repairs.⁸⁵ Finally, the rules governing housing allowance should be redesigned so that it is not linked to “legal” residency status. Instead, it could be paid directly to the land owner as a kind of rental fee (e.g., following an agreement with him/her allowing the dwellers to benefit from land occupancy rights).⁸⁶

4.2. Expropriation of Land to Provide Housing for Marginalized Groups

55. Article 47 of the Draft Building Act expands the grounds which may be invoked as legal bases for expropriation. It explicitly establishes that “ensuring housing for marginalised groups of inhabitants” may represent a public interest which may justify that “the ownership right over land, ownership right over building, and the right to build can be restricted under land-planning documentation by establishing encumbrance or by expropriation”. In principle, this is a welcome development since many Roma settlements are located on land owned by private – natural or legal – entities and lack valid registration in the cadastral registry, since they do not hold the titles of the land on which they live (see also comments regarding cadastral registration in par 73 *infra*). This amendment provides a legal basis for settling, in the long run, the conflict between the proprietary rights of land owners and the tenure rights of dwellers in informal settlements. However, international documents have stated that expropriations should only be considered as a last resort, given the high fiscal cost to the State, should other measures mentioned in pars 52-54 *supra* prove unsuccessful.⁸⁷ It is therefore recommended to prioritize negotiated settlement agreements between the land owner, the local authorities and the dwellers, as well as various tenure solutions, before initiating expropriation procedures; the Draft Building Act should reflect this.

owner and to the inhabitants. For instance where the State authorities could compensate the owner of the land for the costs associated with its occupation by the dweller until such time as the State authorities could provide alternative land as new place of residence (see *op. cit.* footnote 48, par 68 (2012 UN Special Rapporteur Report on Security of Tenure)). See also e.g. the modality of land swapping providing public land as compensation to the private owner, page 105 of UN-Habitat Report on Housing Rights Legislation (2002), available at <http://www.ohchr.org/Documents/Publications/HousingRightsen.pdf> and par 14 the Position Paper of the Centre on Housing Rights and Evictions (COHRE) “Towards Realizing the Housing Rights of Roma and Travellers in Europe” (14 October 2010), available at http://www.cohre.org/sites/default/files/europe_-_coe_position_paper_towards_realizing_housing_rights_roma_travellers_october_2010.pdf.

⁸⁴ See e.g. the Seven Principles of Successful Slum-Upgrading on pages 21-22 of UN-Habitat Quick Guides for Policy Makers on Low-Income Housing: Approaches to Helping the Urban Poor find Adequate Housing in African Cities (2011), available at <http://www.citiesalliance.org/Quick-Guides-Housing-African-Cities>.

⁸⁵ *ibid.* pages 38-39 (UN-Habitat Quick Guides for Policy Makers on Low-Income Housing). See also pages 28-29 of the 2006 OSCE/ODIHR Report on Roma Housing and Settlements in South-Eastern Europe: Profile and Achievements in Serbia in a Comparative Framework - Summary and Recommendations, available at <http://www.osce.org/odihr/23336?download=true>.

⁸⁶ *Op. cit.* footnote 36, pages 132-133 (2012 World Bank Diagnostics and Policy Advice on the Integration of Roma in the Slovak Republic).

⁸⁷ *Op. cit.* footnote 37, par 27 (f) (2013 UN Guiding Principles on Security of Tenure for the Urban Poor).

56. A footnote in the Draft Building Act informs that details on expropriation, compensation, and the relevant procedures will be governed by a specific regulation on expropriation. In that respect, it is noted that Article 20 of the Slovak Constitution provides for adequate compensation in case of expropriation, which is in line with international standards. However, the legislation governing expropriation should be compliant with international legal instruments on expropriation; in particular, it must clearly set forth the conditions and procedural safeguards governing expropriation, and ensure adequate, effective and timely compensation. In any case, the new provision of the Draft Building Act on expropriation will only be effective if the state authorities carry out a proper and in-depth impact assessment of these new amendments and allocate sufficient funds for fair compensation to the expropriated land owners.⁸⁸
57. Additionally, international soft law provides for guiding principles according to which the planning and the process for expropriation should be transparent and participatory; anyone likely to be affected should be identified, and properly informed and consulted at all stages; and consultations should provide information regarding possible alternative approaches.⁸⁹

5. Security of Housing Tenure

5.1. Procedures for Obtaining a Building Permit

58. Article 19 of the Draft Building Act mentions a whole set of documents (e.g. a territorial plan and layout drawing, including textual and graphical expression of architectural, building-technical and technological solutions) which should be submitted in order to obtain a building permit and thus allow the construction of an “authorized” building. Furthermore, Article 137 of the Draft Building Act outlines steps and conditions required for getting a building permit, as a condition for the initiation of building proceedings.
59. While such requirements seem legitimate, some of them may be overly complex and expensive (e.g. the potential costs for architects or other experts to prepare technical drawings, lay-outs, and technical documentation), in particular for vulnerable and poorer households. It would therefore be advisable to consider simplifying such procedures or at least provide certain “special measures” for such groups (see pars 29-30 *supra*), such as financial support (e.g. waiver of administrative fees) or technical assistance to prepare the required documentation at subsidized costs or free of charge.⁹⁰
60. According to Article 82 (1) of the Draft Building Act, “[a] building may only be used for the purpose determined in the decision on the siting of building, the building permit and in the approval decision”. The change of use requires permission from the building office. Regulations should be flexible and enable changes to the dedicated use of buildings within a short amount of time, for instance in case of certain abandoned public buildings. Article 82 (1) of the Draft Building Act should be simplified to reflect this, or

⁸⁸ See e.g. the example of Albania, *op. cit.* footnote 48, page 13 (2013 Report on Property Rights Issues in Albania) where it is stated that “the requirement to compensate expropriated owners at current market value is difficult to implement due to high fiscal costs”.

⁸⁹ See par 16.2 of the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land (2012), available at <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>.

⁹⁰ See e.g. page 50 of the 2013 Report on Legalization of Roma Settlements and Housing Units in Bosnia and Herzegovina, OSCE/ODIHR BPRI Project, available at http://www.oscebih.org/documents/osce_bih_doc_2014040717211228eng.pdf.

should at least provide exceptions for certain cases, e.g. abandoned buildings, where a permit for change-of-use is not required (see also par 43 *supra*).

5.2. Procedures of Regularization for “Unauthorized Buildings”

61. Article 68 (1) of the Draft Building Act defines “unauthorized buildings” as “a building or modification of a building implemented without building permit or without building approval, if this act requires it”. Article 170 of the Draft Building Act further states that the developer of an unauthorized building that was built or initiated before 1 July 2014 may apply for an additional building permit procedure by 30 June 2015. Exceptionally, for municipalities with marginalized groups of inhabitants,⁹¹ the deadline only starts on the first day of the year following the approval of the municipal land-use plan.⁹²
62. Such a provision seems positive as it grants a period of one year in which to commence an administrative legalization procedure for unauthorized constructions. However, the conditions for such “legalization” stated in Article 170 par 4 of the Draft Building Act again seem overly complicated and burdensome. It may prove challenging for vulnerable and marginalized groups, such as the Roma, since their members often live in dwellings that do not meet building standards applicable in Slovakia.⁹³ This would include e.g., cases where buildings do not fulfil thermo-technical and energy performance standards, are not connected to the public water supply and public sewer system and do not comply with other relevant safety, hygienic and technical regulations and standards. To ensure that regularization of informal housing is effective, legalization requirements should be simpler, and may include the creation of a separate legal regime for buildings located in “special zones” (see par 40 *supra*) and/or provide financial and technical support to the most vulnerable and poor households in this process. For instance, certain countries have adopted simple criteria or procedures (e.g. the eight-step procedure in Serbia)⁹⁴ for legalization of so-called informal settlements.
63. Additionally, the law provides no exceptions for municipalities which have already adopted their land-use plan⁹⁵; such situations should be taken into account, given that the vast majority of municipalities in Slovakia have already had their land-use plans approved.
64. Article 68 of the Draft Building Act further provides a general legal exemption, for unauthorized buildings or modifications constructed before 1 October 1976 or before 1 September 1997; these shall not be “regarded as buildings or building modifications implemented without building permit or notice”. In this context, it is worth noting that many Roma dwellings were actually established after the fall of communist regime in 1989, as a result of worsened economic and social conditions. The latter i.e., 1

⁹¹ Pursuant to Article 164 of the Draft Building Act (Provisions on Authorisation), the list of municipalities with urban concentration of marginalised groups of inhabitants shall be laid down by regulation of the Government.

⁹² According to Article 169 (7) “Municipalities with over 1,000 inhabitants which do not dispose of a land-use plan, and municipalities with urban concentration of marginalised groups of inhabitants shall procure and approve a land-use plan of municipality by 31 December 2020”.

⁹³ See par 105 of the Report submitted by Slovakia to the CERD Committee, CERD/C/SVK/9-10, 27 August 2012, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fSVK%2f9-10&Lang=en.

⁹⁴ See the example of Serbia, “Guidelines for Improvement and Legalization of Roma Informal Settlements in Serbia”, signed by the Serbian government in 2007 (available at <http://www.europarl.europa.eu/document/activities/cont/201011/20101126ATT01550/20101126ATT01550EN.pdf>).

⁹⁵ According to Article 169 (4) “Land-planning documentation approved before 30 June 2014 means land planning documentation under this act”.

September 1997, should consequently be favoured, and this could perhaps even be a later date. At the same time, such exemptions may be difficult to obtain in practice, since the actual date of a building or building modification may not be known or difficult to prove.

5.3. Evictions Prior to the Demolition of Dwellings Serving as a Home

65. Article 69 of the Draft Building Act provides the rules pertaining to the decision to demolish unauthorized buildings; Articles 157 and 158 further detail the proceedings for such demolition. While the perceived intention of these provisions to resolve the problem of informal settlements is noted, evicting people of vulnerable and marginalized communities without providing them with alternative housing solutions is problematic.⁹⁶
66. It is worth noting that the ECtHR considers informal dwellings to be “property” protected by Article 1 of Protocol 1 to the ECHR.⁹⁷ Given the large number of informal settlements in Slovakia, and the economic and social fallout caused by the ensuing evictions (both for the occupants, and for the State), prioritizing in-situ legalization strategies could be preferable, notably in cases where informal occupation does not violate other persons’ property rights and does not pose an imminent threat to the health and safety of occupants. This should especially be envisaged where alternative dispute mechanisms have led to the conclusion of a negotiated settlement agreement.
67. Article 69 (1) of the Draft Building Act provides that [t]he building office shall immediately order the developer, land owner or building owner to demolish an unauthorised building or part of it at their own expense, and specify the conditions to be fulfilled during demolition, within a reasonable period of time. The decision ordering the demolition shall be communicated to such person by hand delivery and published on the official information board and on the website of the building office. An appeal to a higher authority is possible (the district authority in the region pursuant to Article 95 par 1 of the Draft Building Act) as is the review of the legality of a decision by a competent court (presumably before an administrative court as per Article 114 of the Draft Building Act).
68. The Draft Building Act does not distinguish between the demolition of unauthorized “dwellings” (i.e., any structure or part of a structure occupied as a person's home or as other living accommodation) and other types of unauthorized constructions. Since the decision to demolish a dwelling serving as a home will necessarily be preceded by the eviction of its occupants, international human rights standards and procedural safeguards applicable to forced evictions will apply, from the time when the decision to demolish is taken, up to its implementation.
69. In its General Comments No. 7 on Forced Evictions (1997), the CESCR Committee affirmed that in cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.⁹⁸ The

⁹⁶ *Op. cit.* footnote 36 (2012 World Bank Diagnostics and Policy Advice on the Integration of Roma in the Slovak Republic).

⁹⁷ See par 129 of *Oneryildiz v. Turkey*, ECtHR judgment of 30 November 2011 (Application No 48939/99), available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-67614#{"itemid":\["001-67614"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-67614#{).

⁹⁸ *Op. cit.* footnote 11, par 14 (General Comment No. 7 on forced evictions of the CESCR Committee). See also the CERD Committee’s 2013 Concluding Observations on Slovakia (*Op. cit.* footnote 38, par 12), which focused, among others, on forced evictions and demolitions of Roma settlements.

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UN Special Rapporteur on adequate housing further stated that legislation aimed at preventing forced evictions is considered essential to a system of effective protection.⁹⁹ States should thus establish a legal framework guaranteeing appropriate and effective forms of legal or other protection against unlawful forced and collective evictions, which should include strict controls as to the circumstances in which legal evictions may be carried out.

70. The provisions of the Draft Building Act on the demolition of unauthorized buildings raise a number of concerns in terms of their compliance with international human rights standards. More specifically, it is noted that in cases involving unauthorized buildings, the building office has little discretion at its disposal; aside from ordering the demolition of the buildings, there appear to be no alternative measures that it could take by which to remedy the “illegal status” of such constructions. Furthermore, the Law does not allow the building office to take into account the particular circumstances of the case, e.g. whether the demolition of the building will render its dwellers homeless, or whether and when alternative housing is or will be available. In cases where the demolition is carried out by a private individual, the Law should also foresee oversight mechanisms to ensure that it is carried out in line with general legal and human rights standards. Finally, it may be helpful to expand on the public information and consultation requirements laid down in Article 158 of the Draft Building Act (see par 75 *infra*).
71. To ensure compliance with international human rights standards and the case-law of the ECtHR, it would thus be advisable to introduce a new provision to the Law. Such provision should specify that in cases where the demolition of an unauthorized building would render its occupants homeless,¹⁰⁰ the decision to demolish such dwelling should only be taken as a matter of last resort. It should be clear from such provision that in these circumstances, demolition is only permissible in exceptional circumstances, namely where the living conditions jeopardize the health and safety of the dwellers or in other exceptional circumstances, provided that the measure pursues a legitimate aim and is necessary and proportionate (see pars 76-80 *infra*). Particularly vulnerable individuals should be provided with (at least temporary) shelter, as also stressed by the ECtHR in its case-law.¹⁰¹ Additionally, the Law should contain mandatory procedural safeguards to protect the rights of the occupants (see pars 81, 83-88 *infra*).
72. Moreover, in such situations where unauthorized dwellings serve as people’s homes, the decision to demolish should be taken by a court, following a pertinent request by the competent building office (see pars 75-86 *infra*).¹⁰² Judicial proceedings should also

⁹⁹ *Op. cit.* footnote 48, par 55 (2012 UN Special Rapporteur Report on Security of Tenure). See also *op. cit.* footnote 22, par 30 (Recommendation CM/Rec(2005)4 of the on improving the housing conditions of Roma and Travellers in Europe).

¹⁰⁰ See *Stanková v. Slovakia*, ECtHR judgment of 9 October 2007 (Application no. 7205/02), pars 60-63, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-82597>, where the ECtHR found that an eviction by a public authority without providing any alternative accommodation, produced effects which were incompatible with the right to respect for private and family life and home.

¹⁰¹ *Op. cit.* footnote 18, par 130 (*Yordanova and others v. Bulgaria*, ECtHR judgment of 24 April 2012).

¹⁰² The ECtHR has considered that since the loss of one’s home is a most extreme form of interference with the right under Article 8 of the ECHR to respect for one’s home, any person at risk of an interference of this magnitude should in principle be able to have the proportionality and reasonableness of the measure determined by an independent tribunal in the light of the relevant principles under Article 8, notwithstanding that, under domestic law, one has no right of occupation (*op. cit.* footnote 18, par 118 (*Yordanova and others v. Bulgaria*, ECtHR judgment of 24 April 2012)).

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have suspensive effect, meaning that the eviction and ensuing demolition proceedings should be stayed while the case is being reviewed.¹⁰³

73. Adding such provisions to the Draft Building Act could help create a perception of greater security of tenure amongst the most vulnerable and marginalized groups. In order to ensure an even greater degree of security, more formalized tenure rights, for instance temporary occupancy permits, temporary non-transferable leases and other forms of provisional tenure¹⁰⁴ could also be envisaged, with the possibility to register dwellings or occupancy rights with the cadastral registry,¹⁰⁵ even if they qualify as “unauthorized buildings”. The latter option would probably require amendments to the cadastral legislation.
74. The 2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement¹⁰⁶ of the UN Special Rapporteur on adequate housing further elaborate on states’ obligations before, during and after an eviction and could provide useful guidance for supplementing the provisions of the Draft Building Act as outlined above.

a. Safeguards Prior to the Decision on Demolition

75. To ensure that there are proper safeguards in place before a decision on demolition is taken, proceedings on the demolition of unauthorized buildings serving as homes should foresee genuine information-sharing and consultation with those affected, particularly with women and vulnerable and marginalized groups.¹⁰⁷ More specifically, information on the proposed evictions and on the planned alternative use for the respective land or housing, should be made available in a timely manner to all those affected.
76. Additionally, the building authority should evaluate whether the demolition pursues a legitimate aim. In this context, the ECtHR has noted that improving the urban environment by replacing unsightly and substandard buildings with modern dwellings meeting relevant architectural and technical requirements could constitute a legitimate aim that is in the interests of economic well-being and the protection of health under Article 8 of the ECHR.¹⁰⁸ At the same time, as mentioned above, it is only under exceptional circumstances that eviction resulting in homelessness may be justifiable, and this will have to be duly motivated.¹⁰⁹
77. When deciding on whether to order the demolition of a building, the building office should also assess the necessity and proportionality of the measures; in this context, it would be helpful if the Draft Building Act would expressly list which considerations should be taken into account. These include, but are not limited to, the question of how

¹⁰³ *Op. cit.* footnote 74, par 36 of Annex I (2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement), which states that “individuals, groups and communities are protected from eviction during the period that their particular case is being examined before a national, regional or international legal body”.

¹⁰⁴ See e.g. though in the context of return of refugees and internally displaced persons, but as comparison page 41 of the Handbook on Housing and Property Restitution and Displaced Persons (2007), available at http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf.

¹⁰⁵ See also the possibility to shift to “settlement land information system”, *op. cit.* footnote 37, par 33 (2013 UN Guiding Principles on Security of Tenure for the Urban Poor).

¹⁰⁶ Annex I to the 2007 Report of the UN Special Rapporteur on adequate housing on “Basic Principles and Guidelines on Development-Based Evictions and Displacement”, A/HRC/4/18, 5 February 2007, available at http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf.

¹⁰⁷ *Op. cit.* footnote 11, par 15 (General Comment No. 7 on forced evictions of the CESCR Committee). See also *op. cit.* footnote 74, pars 37-39 (2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement).

¹⁰⁸ *Op. cit.* footnote 18, par 113 (*Yordanova and others v. Bulgaria*, ECtHR judgment of 24 April 2012).

¹⁰⁹ See for instance par 21 of the Amicus Curiae to the Constitutional Court of South Africa in the Case no. 20/04 President of the Republic of South Africa and Modderklip Boerdery (Pty) Ltd, available at http://www.escri-net.org/sites/default/files/Modderklip_Nkuzi_and_other_Amici_Curiae_0.doc.

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long a person has been staying/residing at a location and how long this has been tolerated by the local authorities,¹¹⁰ the applicants' situation as a potentially socially disadvantaged group,¹¹¹ the presence of children, repercussions on the applicants' lifestyle and social and family ties,¹¹² whether the demolition will render the person/family homeless, the impact on the rights of others (particularly the property rights of private individuals or legal entities), the public interest at stake, and/or the existence of alternative options¹¹³ (see par 80 *infra*). Other criteria to perhaps mention in the legislation could involve checking whether the respective occupant has other housing at his/her disposal (double occupancy) or linking the provision of alternative accommodation to the income of the dweller.¹¹⁴

78. When the owner is a government authority, and if not already contemplated by existing legislation, the government should consider introducing a procedure to issue occupancy rights to the dwellers, possibly in exchange for a fee (see pars 32-33, 54 and 73 *supra*),¹¹⁵ this may also require changes to the land use category (see pars 43, 53 and 60 *supra*).
79. If the owners are private individuals and legal entities, their rights are protected under Article 1 of Protocol 1 to the ECHR, and interferences will only be allowed if (i) prescribed by law; (ii) in the general interest; and (iii) necessary in a democratic society. While the provisions suggested above would most certainly be considered to pursue a general interest (i.e., preventing homelessness of the most marginalized), they should also be drafted so as to be sufficiently accessible, precise and foreseeable in their application.¹¹⁶ Moreover, to assess the proportionality of the measure, a fair balance must be struck between the owner's rights to use the property and the rights of the occupants of the informal dwelling to respect for their private and family lives and homes (as well as their rights to peaceful enjoyment of their possessions).¹¹⁷ In order not to violate Article 1 of Protocol 1 to the ECHR, the owner concerned should not suffer an individual and excessive burden.¹¹⁸ Some good practice in that respect suggests that at times, the owner should be compensated by the state for the loss of the use of the property in the interim, e.g. in situations where the eviction order is suspended until alternative (adequate) housing has been found for the occupiers.¹¹⁹ A similar approach may be adopted in the Draft Building Act, providing that appropriate funding is allocated to ensure adequate compensation of the owner pending the recovery of the land. In terms of the amount of compensation, to assess whether the

¹¹⁰ *Op. cit.* footnote 18, par 113 (*Yordanova and others v. Bulgaria*, ECtHR judgment of 24 April 2012). See also *Winterstein et Autres c. France* (only available in French), ECtHR judgment of 17 October 2013 (Application No 27013/07), par 152, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-126910>.

¹¹¹ *Op. cit.* footnote 18, par 129 (*Yordanova and others v. Bulgaria*, ECtHR judgment of 24 April 2012).

¹¹² See *Chapman v. United Kingdom*, ECtHR judgment of 18 January 2001 (Application No 27238/95), par 73.

¹¹³ *ibid.* pars 103-104.

¹¹⁴ See e.g. though in the context of return of refugees and internally displaced persons, but as comparison page 84 of the Handbook on Housing and Property Restitution and Displaced Persons (2007), available at http://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf.

¹¹⁵ See e.g. page 51 of the 2013 Report on Legalization of Roma Settlements and Housing Units in Bosnia and Herzegovina, OSCE/ODIHR BPRI Project, available at http://www.oscebih.org/documents/osce_bih_doc_2014040717211228eng.pdf.

¹¹⁶ See *Nobel v. The Netherlands*, ECtHR judgment of 2 July 2013 (Application No 27126/11), pars 33-34 available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122988#{"itemid":"001-122988"}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-122988#{).

¹¹⁷ *Op. cit.* footnote 97, par 129 (*Oneryildiz v. Turkey*, ECtHR judgment of 30 November 2011).

¹¹⁸ See e.g. *op. cit.* footnote 116, par 36 (*Nobel v. The Netherlands*, ECtHR judgment of 2 July 2013).

¹¹⁹ See e.g. par 45 of the Amicus Curiae to the Constitutional Court of South Africa in the Case no. 20/04 President of the Republic of South Africa and Modderklip Boerdery (Pty) Ltd, available at http://www.escri-net.org/sites/default/files/Modderklip_Nkuzi_and_other_Amici_Curiae_0.doc.

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compensation is sufficient, the ECtHR will consider, amongst others, whether it is large enough to cover at least the necessary maintenance costs and taxes.¹²⁰

80. Also, when deciding on demolition, all feasible and reasonable alternative options, including methods of dealing with safety and health risks, while also taking into account the options proposed by the affected persons, groups and communities, should be studied seriously by the building office.¹²¹ Alternative options should not propose unreasonable relocation,¹²² should not result in further segregation,¹²³ and should fulfil the requirements relating to “adequate” housing (see par 17 *supra*).¹²⁴ Especially, authorities should try not to separate members of the same extended family or community as a result of evictions.¹²⁵ If there is no other alternative but to demolish a building, the building office should ensure, by whatever means necessary, to minimize the adverse effects of evictions.¹²⁶
81. Moreover, where possible, legal aid should be provided to persons who are in need of it,¹²⁷ free of charge if necessary given the circumstances.¹²⁸ Affected persons should have the possibility to make an inventory to assess the values of their properties, investments and other material goods that may be damaged.¹²⁹
82. It is recommended to expressly include all of the above-mentioned safeguards in the Draft Building Act, and to add a new provision regulating demolition proceedings in cases where the respective buildings serve as a home.
83. Furthermore, in the case of poor families with no alternative housing, or funds to pay for it, the Draft Building Act could also include the obligation for the building office to notify the Slovak National Centre for Human Rights. This would facilitate the monitoring and investigation of cases of forced evictions and State compliance with the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement.¹³⁰ It would also be useful to provide for the involvement of social services, given the social impact that the demolition may have and the need to search for alternative housing options.

¹²⁰ See e.g. *op. cit.* footnote 116, par 38 (*Nobel v. The Netherlands*, ECtHR judgment of 2 July 2013).

¹²¹ *Op. cit.* footnote 18, par 124 (*Yordanova and others v. Bulgaria*, ECtHR judgment of 24 April 2012). See also *op. cit.* footnote 11, par 13 (General Comment No. 7 on forced evictions of the CESCR Committee); and *op. cit.* footnote 74, par 56(i) (2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement).

¹²² *Op. cit.* footnote 74, pars 43, 55 and 56 (2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement). Particularly, the time and financial cost required for travel to and from the place of work or to access essential services should not place an excessive burden on budgets of low-income households and relocation sites must not be situated on polluted land or in immediate proximity to pollution sources. See also *Chapman v. United Kingdom*, ECtHR judgment of 18 January 2001 (Application No 27238/95), par 103.

¹²³ *Op. cit.* footnote 22, par 30 (Recommendation CM/Rec(2005)4 of the on improving the housing conditions of Roma and Travellers in Europe).

¹²⁴ *Op. cit.* footnote 74, par 16 (2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement).

¹²⁵ *ibid.* par 52 (2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement).

¹²⁶ *ibid.* par 41 (2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement) which states that the detailed justification for the decision should include information on (a) the absence of reasonable alternatives; (b) the full details of the proposed alternative; and (c) where no alternatives exist, all measures taken and foreseen to minimize the adverse effects of evictions.

¹²⁷ *Op. cit.* footnote 11, par 16 (General Comment No. 7 on forced evictions of the CESCR Committee).

¹²⁸ *Op. cit.* footnote 74, par 41 (2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement).

¹²⁹ *ibid.* par 42 (2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement).

¹³⁰ *ibid.* par 70 (2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement).

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b. The Decision to Demolish a Dwelling Serving as a Home

84. As mentioned in par 72 *supra*, the decision to demolish an unauthorized dwelling serving as a home should be taken by a court. The building office should thus, after having followed the proper procedures, submit a duly substantiated request for demolition of a dwelling serving as a home to the relevant court, which would then examine the necessity and proportionality of the measure in detail.¹³¹ Administrative or civil procedure rules may also require amendments to that effect. The decision of the court should be subject to judicial review.¹³²
85. Moreover, in cases of emergency, where the health and safety of the dwellers are at stake, the building office should be able to apply for an emergency court order.
86. Finally, the Draft Building Act, including its Article 69, should expressly provide that adequate and reasonable notice containing a written detailed justification shall be provided to all affected persons well ahead of the scheduled date of the demolition/eviction.¹³³

c. Safeguards During the Process of Demolishing Unauthorized Dwellings

87. During the demolition process itself, certain additional substantive and procedural requirements should be respected to ensure compliance with international human rights standards.¹³⁴ First of all, government officials or their representatives should be present during the demolition/eviction, even if it is carried out by a private person, as shall neutral observers, if they so request.¹³⁵ Second, all persons carrying out the demolition and prior eviction of occupants shall be properly identifiable to the persons being evicted,¹³⁶ and shall present formal and written authorization for demolition and eviction. Third, due consideration shall be given to the protection of the women from gender-based violence and to the rights of children.¹³⁷
88. Fourth, if public authorities exercise the use of force, this must respect the principles of necessity and proportionality, as well as the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials¹³⁸ and any national or local code of conduct consistent with international law enforcement and human rights standards.¹³⁹ Also, demolition of buildings, and prior eviction, shall not take place during particularly bad weather or at night unless the affected persons consent otherwise, and shall not occur during festivals or religious holidays, prior to elections, or during or just prior to

¹³¹ See *Winterstein et Autres c. France* (only available in French), ECtHR judgment of 17 October 2013 (Application No 27013/07), par 156, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-126910>.

¹³² *ibid.* par 41 (2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement), which states that the detailed justification for the decision should include information on (a) the absence of reasonable alternatives; (b) the full details of the proposed alternative; and (c) where no alternatives exist, all measures taken and foreseen to minimize the adverse effects of evictions. Paragraph 56(j) refers to a minimum 90 days' notice following the public hearing where it is found that there is not alternative solution to eviction.

¹³³ *Op. cit.* footnote 74, par 56(e) (2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement).

¹³⁴ *Op. cit.* footnote 11 (General Comment No. 7 on forced evictions of the CESCR Committee).

¹³⁵ *ibid.* par 46 (2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement).

¹³⁶ *Op. cit.* footnote 74, par 45 (2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement).

¹³⁷ *ibid.* par 47 (2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement).

¹³⁸ UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, 27 August to 7 September 1990, available at <http://www.unrol.org/files/BASICP~3.PDF>.

¹³⁹ *Op. cit.* footnote 74, par 48 (2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement).

school examinations.¹⁴⁰ Legislation should ensure that certain measures are in place to protect property against destruction and illegal appropriation, occupation or use, in case the evicted occupants should be obliged to leave behind any property or possessions in the course of eviction procedures.¹⁴¹ Finally, the affected persons should have appropriate legal remedies at their disposal (see, in this context, pars 90-91 *infra*).

89. Unless already included in other pertinent legislation, it may be helpful to include the above aspects in the Draft Building Act.

5.4. Right to Effective Remedies and Fair Compensation of the Evicted Dweller

90. When demolition and eviction is unavoidable and necessary, the State must provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interests in property, moral damages and lost opportunities (e.g., employment, education and social benefits).¹⁴² In this context, it should be pointed out that ECtHR case-law and international documents expressly recognize that this shall include compensation for losses related to informal property, such as dwellings built “illegally” or slum dwellings.¹⁴³ Restitution and return should be prioritized, provided that this is in line with the will of the affected persons.¹⁴⁴
91. In that respect, the legislation shall ensure that both women and men from the same household are co-beneficiaries of all compensation packages.¹⁴⁵

[END OF TEXT]

¹⁴⁰ *ibid.* par 49 (2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement).

¹⁴¹ *ibid.* par 50 (2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement). For instance, in the case of evacuation of the occupant from a substandard dwelling, Articles L. 542-1 and 542-2 of the French Construction and Housing Code provide that the public authorities shall list the left-behind possessions which shall then be stored at an appropriate place designated by the public authorities during one year, after which - if they have not been collected by the evacuated persons - they should be sold by public bidding.

¹⁴² *Ibid.* par 60 (2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement).

¹⁴³ *Op. cit.* footnote 97, pars 124-129 (*Oneryildiz v. Turkey*, ECtHR judgment of 30 November 2011). See also par 61 of the 2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement.

¹⁴⁴ *Op. cit.* footnote 74, pars 64-67 (2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement).

¹⁴⁵ *ibid.* par 62 (2007 UN Basic Principles and Guidelines on Development-Based Evictions and Displacement).