

Housing Policies and Human Rights

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The growing prominence of human rights within international law and the increasing of homelessness in the world have led the State to reflect about their immediate obligations to substantively provide housing for everyone. Once the obligation to protect and promote the right to adequate housing has been formally accepted by such a State within the international system of human rights, it is committed to incorporate international standards, principles and norms into their respective domestic legal regimes. Beyond this, they should change any practices and amend any laws that contravene human rights, and if it does not happen, the State would be violating the Covenant on Economic, Social and Cultural Rights by failing to achieve a minimum essential level of satisfaction of this right.

The concrete implementation and fulfillment of these international standards will be effective for individuals and groups by the adoption of public housing policies by National Governments. The implementation of housing policies aiming at guarantying the satisfaction of core housing rights elements is a key element in the progressive realization of such a right. By the means of public policies, the State has obligations of conduct and results. A rights-based approach is one important means by which to guarantee that housing policies are not only non-discriminatory but actually ensure equality as a concrete result.

Under international law, human rights prevail over all other international instruments and agreements, including those dealing with the areas of economics, trade and finance. The economic and financial agreements, including those requiring structural adjustment policies such as those imposed by the World Bank and the International Monetary Fund, especially for developing countries, cannot enter into action prior to the fulfillment of certain human rights instruments. The State cannot avoid its obligations by merely saying that its policies are aimed at economic development and that poverty or illiteracy will be eradicated eventually. Housing rights have already been well defined under international human rights law, which stress the concrete obligations and policies that are to be taken by both the Government and third party groups.

Housing policies and legislation should integrate the non-discrimination and equality rights and the right to adequate housing. The State may avoid discriminatory practices created by divergences existing between constitutional provisions and practice. It should guarantee the rights embodied in the international law without discrimination on account of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The prohibition of discrimination and the protection of the right to adequate housing are both enshrined in the Universal Declaration of Human Rights.

Discrimination raises disparities in equal access to adequate housing and land by vulnerable groups, minorities and women. For example, the discriminatory planning and management laws that regulate the price of urban land in cities by means of a protective zoning model which throws large portions of the population to live in the improved outskirts.

The obligation to respect, protect and fulfil requires positive actions of conducts to give reasonable results to the enjoyment of such rights. In the case of housing rights, the obligation of conduct could involve, for example, the adoption and implementation of a plan of action to reduce the growth of slums and the occupation of insecure and unsafe areas for housing purposes. The obligation of results requires the State to achieve specific targets to satisfy detailed substantive standards and outputs enshrined in national policies and legislation. Conduct and results involving both immediate and long-term intervention can not be separated as they could be seen as an effective tool for monitoring the implementation of economic, social and cultural rights.

To bring effectiveness to housing policies the national governments should use maximum available resources to ensure the widest possible enjoyment of these rights under prevailing circumstances. Further, steps should be taken to ensure co-ordination between ministries, regional and local authorities in order to reconcile related policies. Likewise, the policies should take into account concrete measures to prevent the violation of any individual's rights to housing. In any event, States are obligated to take steps towards the full realization of the relevant rights within a reasonable timeframe. The actions undertaken may include, for example, enforcement of existing non-discrimination laws, initiation of national housing programs, or increased financing of social housing projects, among other initiatives. It is also important to establish judicial remedies for violations of housing rights, so that people can enforce their rights.

Nevertheless, the General Comment No. 3 of the United Nations Committee on Economic, Social and Cultural Rights states that the *progressive* implementation could not be misinterpreted as depriving the obligation of all meaningful content. Flexible devices, reflecting the realities and the difficulties of the country in ensuring full realization of economic, social and cultural rights, should be adopted. Although the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes various obligations, which are of immediate effect. Thus, steps toward the achievement of the full realization of relevant rights must be taken within a reasonably short time after the Covenant's entry into action. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the law.

The duty to take immediate steps to ensure the full realization of economic, social and cultural rights will require the adoption of a national housing strategy which, as stated in the Global Shelter Strategy, "defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective ways of using them and sets out the responsibilities and time-frame for the implementation of the necessary measures". Such a strategy should reflect extensive consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives.

Countries must seek to combat homelessness by providing policies that do not result in the adoption of retrogressive measures. If a particular legal system utilizes the principle of non self-executing treaties by courts refusing to recognize international law, it would be important to incorporate the instruments that prohibit discrimination into national regulations. Then, if legislative or administrative retrogressive measures are adopted, the courts could act upon some specific aspects of housing rights seeking to redress to the violations implied by the adoption of such measures. The justiciable aspects that any Judge can rule upon are: forced evictions and Demolition; security of tenure; non-discrimination and equality of access; housing affordability; landlord-tenant relations; access to services; property rights; the right to accommodation; the right to counsel and legal aid; the right to participation; the right to habitable housing.

Fortunately, it has been noticed that many States have incorporated housing rights into their respective national constitutions or legislation. In several cases, these constitutional or legislative texts are modeled after international standards and norms and then have incorporated the legal binding framework to be adopted and considered by housing policies addressing homelessness. However, a number of misconceptions and misinterpretations regarding the right to adequate housing continue to hinder efforts and policies designed to fulfil these rights in a universal sense. The UN Special Rapporteur on the Right to Adequate Housing has outlined the most common ones: 1) social housing is invariably suspect; 2) national wealth increases home ownership; 3) housing rights are less fundamental than other property rights; 4) the private sector or the market will guarantee housing for all; 5) legislative recognition of housing rights is sufficient to ensure the realization of these rights; 6) housing rights are non-justiciable; 7) most housing is built by the public and private commercial sector; 8) measuring homelessness is impossible; 9) squatters are criminals; 10) housing is a problem only in the developing countries; 11) public expenditure on housing is sufficient; and 12) the right to adequate housing is unrelated to other social concerns.

The right to adequate housing should therefore be a component of public policies and legislation, not only for the provision of future adequate housing but as a goal of improving current housing. The adoption of favorable laws and policies would not be a valuable tool by which to promote and protect housing and equality rights, if the civil society remains passive before the adverse realities being faced by a variety groups currently in society. The nature and direction of the national or local government-led housing policies will therefore depend on the political process of the broad and active engagement (or not) of civil society and the popular sectors. It is necessary to strengthen and empower the networks, coalitions and associations engaged and committed with the transformation of the overcoming exclusionary, patrimonial, unsustainable and predatory global order.