International Instruments on Housing Rights

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Abstract: Housing rights can act to guarantee minimum housing provision for poor and deprived persons, based on respect for human dignity. These rights are now established within many international public law instruments and treaties, as well as national constitutions, laws and curial jurisprudence. There is a growing corpus of law giving greater definition and clarification to state obligations, and the nature and extent of housing rights. Housing rights discourse is expanding from shelter and social housing toward embracing all elements of housing systems, including housing as property, housing finance, infrastructure, environmental, and regulation systems. But beyond regulation of these elements, can these housing rights be integrated into a template for the governance of overall housing systems in the new era of regulation of housing and finance markets?

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Housing Rights: Why We Need Them

Housing rights have taken on a new relevance in the context of financial globalization,[1] migration,[2] privatization of social housing and marketization of housing as a commodity.[3] Yet their absence is striking in responses to international disasters involving mass homelessness, such the Hurricane Katrina in the United States,[4] losses of over $500 billion in the subprime crisis,[5] and the collapse of global investment banks Bear-Sterns, Lehmann Brothers, Merrill Lynch, and others. The global growth of slums in rapidly growing cities,[6] 1 billion people without adequate housing, growing homelessness and affordability problems in urban areas,[7] and the impact of housing on health and on women and children on the environment and cities have also highlighted the need for a modern rights-based approach to housing.

Housing has always been seen as a necessity of life alongside food and clothing. But in many industrialized and urbanized societies it is produced, exchanged, and mortgaged as a market commodity and as an asset. The tension between these two functions underlies the variations of State housing policies everywhere. All states promote housing development and regulation to some extent. Today, home owners across the world are encouraged to view their home as an asset, a store of future and hereditable wealth and mortgage equity. Yet, housing markets are like any other asset markets, prone to booms and busts, and this has important consequences for States approaches to housing rights.

Neoliberal and social democratic governments accept the market as the primary provider of housing, with government intervention to regulate the excesses of the market and to intervene when the market fails. Marcuse and Keating point out that the only disagreement between these two dominant political perspectives is on how serious that failure is, and just what government should do about it.[8] These approaches to housing can be contrasted with a right-to-housing position "in which government's first obligation is to see that all are decently housed, and the for-profit market is managed and regulated in a way subservient to that goal."[9] The for-profit market is the default position for neoliberal and social democratic policies, with public action limited to countering its failure. Government support for decent and affordable housing for all who need it is the default position of the right-to-housing approach, with the for-profit market functioning where it does not interfere or frustrate that provision. However, the UN Special Rapporteur on adequate housing, Raquel Rolnik pointed out on October 2008 that markets alone cannot ensure housing for all.

> The belief that markets will provide housing for all has failed. The current crisis is a stark reminder of this reality. A home is not a commodity—four walls and a roof. It is a place to live in security, peace and dignity, and a right for every human being.[10]

Housing Rights Are Already Established

The historical role of law has been to protect private property and buttress market systems, including housing market systems. Yet, governments across the world have developed housing rights through international, regional, constitutional, and national law. At an international level housing rights instruments, now adopted by almost all the States of the world, can offer a legal discourse based on human dignity, advancing person-centered and other values. These can temper and refocus the commercial and commodity based interpretations of housing law, and indeed provide a feminist critique of housing systems.[11] Housing rights are viewed as an integral part of economic, social, and cultural rights within the UN,[12] European, inter-American, and African human rights

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instruments, such as the American Declaration on the Rights of Man (1948).

At a national level, at least 40% of the world's Constitutions refer to housing or housing rights, while some states have introduced legislation granting housing. The Housing (Scotland) Act 1987 (as amended) provides a right to accommodation for homeless persons, including a right to temporary accommodation for all homeless persons, and a right to long-term accommodation for broadly defined categories, encompassing the majority of homeless applicants. By 2012, the right to long-term accommodation will be extended to all. This right is enforceable in the civil courts and courts may order in appropriate cases that accommodation be provided to homeless persons. In France, an enforceable right to housing has also been established through the DALO (Droit au Logement Opposable) Act of March 5, 2007.[13] The Act provides for a two-tier remedial mechanism with regional mediation committees and the possibility to take a case before administrative courts. The Constitution of South Africa (1996) guaranteed a right to housing for all and many cases have led to court orders specifying State action to meet this obligation.[14]

The use of planning law to achieve integration of social/affordable and private housing, control of land use, and quality of infrastructure and amenities, is now becoming widely recognized as a somewhat lateral, but practical, means of realizing some housing rights.[15] Courts across the world have developed housing rights in areas of security of tenure, respect for home, nondiscrimination, decent physical standards, and fair procedures in evictions.[16]

This short article focuses on the public international law housing rights approach. It seeks to evaluate what if anything, this jurisprudence can add to effective advancement of housing rights at local level, in the complex and legally contested arena of housing systems. First, the descriptive nature of the article is intended to highlight hitherto nascent legal discourses which can be applied to all legal aspects of housing systems, such as finance, planning, standards, etc. Second, while valuable precedents are being established at local level across the world, particularly in Australia, Africa, Asia, the Americas, and in the Russian Federation, the analysis of the writer is confined to key developments within international law, and within Europe. This is viewed, rightly or wrongly, as a key location where the two functions of housing as a necessity and as a commodity or asset, grapple for hegemony against a backdrop of growing human rights jurisprudence.

Frameworks for Housing Rights

United Nations

The *Universal Declaration of Human Rights*[17] (1948), adopted by almost all States, recognizing rights to housing in Article 25 which states that:

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

The International Covenant on Civil and Political Rights (ICCPR) (1976) adopted by all States including the United States, states at Article 17:

1. No one shall be subjected to arbitrary or unlawful interference with his [or her] privacy, family, home or correspondence, nor to unlawful attacks on his [or her] honor and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Similarly, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), of 1966, now ratified by almost 150 States recognizes the right to housing:[18]

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

While these instruments do not prescribe the nature of housing systems adopted by ratifying States, they are required to recognize, respect, and protect these housing rights, meet "minimum core" obligations, ensure nondiscrimination and direct legislative measures, appropriate policies, and the maximum of available resources toward a progressive realization of these rights.[19] *General Comment No. 4. on the Right to Adequate Housing* sets out the minimum core guarantees which, under public international law, are legally vested in all persons.[20] These are legal security of tenure, availability of services, materials and infrastructure, affordable housing, habitable housing, accessible housing, housing in a suitable location, and housing constructed and sited in a way which as culturally adequate.[21]

Further relevant UN instruments include the UN *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW),[22] the *Convention on the Rights of the Child*,[23] the *UN Global Strategy for Shelter to the Year 2000*,[24] and the *UN Convention Relating to the Status of Refugees* (1951), and its Protocol.[25] Further UN international instruments set out rights to housing for migrants, people with disabilities and others.[26]

Council of Europe[27]

The Council of Europe, established in 1949 and now with 47 Member States promotes housing rights through the European Social Charter and Revised Charter,[28] and in an oblique way through its *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR).[29] Its Commissioner for Human Rights, Mr. Thomas Hammarberg, has recently clarified the legal protection of housing rights, obstacles and gaps in implementation, with recommendations on how these rights are to be realized.[30]

States that adopt the European Social Charter and Revised Charter (RESC) accept as the aim of their policies, to be pursued by all appropriate means, both national and international in character, the attainment of conditions in which the rights and principles within the Charters may be effectively realized without discrimination.[31] The Charters contain important rights to social and medical assistance for those without adequate resources,[32] establishing housing obligations in relation to physically and mentally disabled persons,[33] children and young persons,[34] and rights to social, legal, and economic protection for families, in-

cluding a State obligation to provide family housing.[35] The Social Charter grants migrant workers an explicit right to be treated equally in relation to access to housing,[36] and sets out the right of elderly persons to provision of housing suited to their needs and their state of health.[37] Article 30 of the RESC, on rights to protection against poverty and social exclusion, includes an obligation on Contracting States to promote effective access to a range of services, including housing.

Article 31 of the RESC establishes an apparently comprehensive right to housing which addresses three elements of housing.[38] With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. To promote access to housing of an adequate standard.
2. To prevent and reduce homelessness with a view to its gradual elimination.
3. To make the price of housing accessible to those without adequate resources.[39]

The European Committee of Social Rights (ECSR) monitors States' compliance with the Charters through regular reports from States and the Collective Complaints system, which permits approved organizations to submit complaints against States.[40] It has established clear legal housing rights standards on contractual safety, availability, allocation, standards of adequacy, habitability, affordability, and suitability of housing.

A significant clarification of the obligations under Article 31 arose from the Collective Complaint of *FEANTSA v. France*, which established, among other things, that recognition of the obligations under Article 31, while not imposing an obligation of "results," must take "a practical and effective, rather than purely theoretical form."[41] This case created a significant precedent by critically evaluating the plethora of social provisions tacked onto the French housing market system, in terms of their progressively realization of housing rights for all in housing need. While France could demonstrate significant housing activity, such as 100,000 new social units annually, major expenditure on homelessness, legislation on housing rights (this was pre-DALO), enforceable housing codes on standards and eviction procedures, security of tenure and other measures, the ESCR found a violation of housing rights under Article 31. The ESCR divined through the administrative, budgetary, legal, statistical and other data, challenging their effectiveness in achieving the required result—the prevention of homelessness and a continued reduction in housing need, with progress toward housing for all.[42]

The ECHR creates a supra national human rights appeals mechanism through the European Court of Human Rights (ECtHR), and many States have integrated the Convention into national law as well.[43] Positive obligations on States in relation to housing rights are being established through the ECtHR, especially in relation to vulnerable persons who cannot assert rights themselves, although many appeals from domestic courts fail to reach the ECtHR.[44] While there is no ECHR obligation for a universal provision of housing by the State, a combination of obligations under Articles 3 on State obligations to prevent of inhuman and degrading treatment, and Article 8, on State respect for privacy, home, and family life, are creating some legally defined minimum State obligations.[45] For instance, in *Marzari v. Italy*,[46] the obligation for public authorities to provide housing assistance to an individual suffering from a severe disability, because of the impact of such refusal on the private life of the individual, was established.[47] Furthermore, positive obligations under Article 8 have ordered State action in relation to protection from smells and nuisance from a waste treatment plant,[48] toxic emissions emanating from a chemical factory,[49] environmental pollution from a steel plant,[50] and noise from bars and nightclubs.[51]

Some housing rights available in national laws, such as entitlements to State housing, have been held to amount to a property right, thereby benefiting from the protection of ECHR Article 1 of Protocol 1, on the prevention of State interference with that right.[52] This has led to a further elaboration of such housing rights, with State obligations in respect to fair procedures and speedy implementation (Article 6)[53] and nondiscrimination in their implementation (Article 14). Of course, this jurisprudence builds on preexisting domestic rights or entitlements, rather than any creation of new rights.

European Union (E.U.)

While the 1957 Treaty of Rome and subsequent E.U. Treaties do not refer directly to a right to housing, much E.U. social policy, particularly the drive toward a single market in goods and services, has a bearing on housing rights and housing policy. To avoid a "race to the bottom" and in the absence of E.U. institutional competence (outside labor legislation) to introduce minimum standards in areas of social policy, the Community developed an alternative approach based on "fundamental social rights" in the 1990s.[54] E.U. law, which overrides national law, provides housing rights protection through nondiscrimination in public or private access on grounds of migrant workers status,[55] race or ethnicity[56] or gender.[57] Unfair contract terms in housing contracts are prohibited across Europe under the 1993 Directive on Unfair Terms in Consumer Contracts.[58]

The E.U. Charter of Fundamental Rights, does not include a specific right to housing, but Article 34(3) on social security and social assistance states:

> In order to combat social exclusion and poverty, the Union recognizes and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the Rules laid down by Community law and national laws and practices.[59]

The Treaty of Lisbon has adopted this measure as part of E.U. law, integrating human and housing rights within the jurisprudence of the European Court of Justice and the actions of the European Commission in its creation of E.U. legislative measures, with direct application overriding incompatible domestic law.

Defining and Implementing the Obligations

There have been many attempts to clarify the contents and obligations of international public law housing rights, including the concepts of minimum core obligations and progressive realization of rights according to available resources.[60] Legal liberal models of individually enforceable rights surpassing programmatic approaches have contributed little, aside from complex legal arguments juxtaposing the role of politicians and courts in allocating resources in society.[61] In order to be effectively incorporated into domestic laws and precedents, it is critical that objective, universal, quantifiable standards, based on legal definitions and contemporary norms are developed within the international monitoring systems.[62] Defining housing rights instruments in terms of usable specific, measurable, achievable, relevant, and time limited mea-

sures (SMART) has proven elusive.[63] At UN level there has been extensive analysis of transposing legally defined standards for housing rights on national housing systems and standards, through indicators and benchmarks.[64] This has exposed the propensity of States to highlight the benefits and complexities of their administrative and legal measures, affordability measurements, definitions of housing adequacy, enormous expenditure levels, detailed policies, and strategies, etc. However, the role of law as the ultimate authority of compliance in the face of varying national standards, statistical information and policies was emphasized by a UN Committee in 1991:

> . . . human rights indicators should be based on respect for human dignity, equity, social justice, non-discrimination, freedom of choice and empowerment, victims of human rights violations as well as others excluded from human dignity[65] . . . in the end the results of evaluation of compliance with human rights standards was a balanced assessment and largely a matter of legal analysis.[66]

Yet, Robertson pointed out that such words as "maximum" in relation to the level of resources to be devoted to realizing rights, form the sword of human rights rhetoric, while words like "available" facilitate "wriggle room" for the State.[67] Hunt has highlighted the variable and elusive nature of such terms as "progressive realization," and "maximum of their available resources."[68] These imply that some State obligations could vary over time: "These variable elements of States parties' obligations under ICESCR contribute to the sense of uncertainty which remain a feature of international economic, social and cultural rights."[69]

Some housing rights advocates entirely promote a "violations approach," based on "naming, shaming, and blaming," rather than detailed arms length monitoring of programs and compliance based on regular reports.[70] The *Limburg Principles*[71] and *The Maastricht Guidelines*[72] have been developed within international human rights law, establishing the nature of violations of economic, social and cultural rights, as well as defining appropriate penalties and sanctions for such violations, which should be available to people at local level through domestic laws. For instance, the Maastricht Guidelines suggest that "all victims of violations of economic, social and cultural rights are entitled to adequate reparation, which may take the form of restitution, compensation, rehabilitation and satisfaction or guarantees of non-repetition" (para 23). However, effective development of violations approaches requires authoritative sanctions against States for breaches of defined rights, but it unclear whether organizations such as the UN could achieve this in relation to housing rights.

Housing Rights Apply to All the Elements of the Housing System

Housing rights principles provide an essential philosophical, social and political base for social and subsidized housing. Indeed, it is an essential characteristic of effective housing rights implementation that provision for those who are vulnerable and most in need takes priority, although these do not always benefit from social housing. However, there is a general tendency to equate housing rights with shelter and social housing, alongside a perception that housing rights involve creating an obligation on the State to provide a minimum level of shelter and housing for all. Housing rights advocates have not yet been successful in the integration of these rights into economic and market discourses.[73] There can be a tendency to shun the structures and dynamics of the housing systems, in favor of more complex definitions and descriptions of failures of housing rights implementation. Of course, the basic right to shelter is a minimum core requirement of the implementation of housing rights. Yet, while the right to housing is regularly seen as the hope for the universal housing of the poor, Angel points out that:

> ". . . there is little merit in a housing policy that solely focuses on the poor, hoping against hope that "the market" will take care of the rest, without paying any attention to whether the market is functioning properly. When the market is not functioning properly, the poor are squeezed as well."[74]

Angel identifies the components of the contemporary "enabling policy" model of housing markets systems, as promoted by the World Bank and others, and widely accepted by policy makers and governments. Functioning housing market systems require legal instruments and State involvement to create five essential elements:

- Property rights regime;
- Housing finance regime;
- Residential infrastructure regime;
- Regulatory regime;
- Housing subsidies/public housing regime.[75]

The establishment of individual and enforceable property rights in land and housing are seen as the cornerstone of this enabling housing policy regime. A functional and effective property rights regime must evolve a set of transparent, predictable, nondiscriminatory, and stable rules that preserve the rights of individuals to use, invest, maintain, rent, mortgage and sell their land and housing properties without hindrance, and with the full protection against arbitrary action by the authorities.[76]

Contemporary writers on global development, such as Hernando De Soto,[77] claim that one of the principal reasons for the underdevelopment of nations is the absence of a property registration system to facilitate mortgage lending, consequently prohibiting the development of personal capital and equity growth in land and housing.[78] The formal and informal rules governing property acquisition, sale, development, and use are of critical importance. Housing is by far the most widely distributed form of private wealth, and investment in housing requires law facilitating certainty, exclusivity, transferability, and constitutional protection. Complex legal ownership arrangements involving family law systems, with rules on ownership and division of property on marriage, separation, divorce, death, and cohabitation are required. Innovative legal mechanisms have also been developed to deal with unregistered land, transfer and conveyancing procedures, disputes, and the regulation of actors involved in housing markets.

The housing finance regime requires the creation and maintenance of an effective, enforceable lending and regulatory regime for housing finance, as well as the development of housing finance institutions and sustainable mortgage markets.[79] This regime involves legal measures relating to mortgages, equity release, charges, consumer credit legislation, regulation of lenders, as well as market liberalization and competition. Housing finance is now a global issue, and its impact in the collapse of major financial institutions demonstrates the failure of policies which ignore housing systems.[80]

The third requirement for the enabling market approach is an effective residential infrastructure regime. This requires legisla-

tion and regulation in relation to zoning, planning, public health, control of nuisance and sanitation measures, and planning controls on urban land development and supply. Detailed legislation and case law have developed in relation to roads and walkways, water, sewage, drainage, transport, public facilities, and other services, which contribute to housing quality.

The fourth and most important element of this approach for industrialized countries is the regulatory regime for quality in housing systems.[81] Building control measures exercised by the State are critical elements in the development of housing markets. Indeed, these markets actually require a legal and regulatory framework that only governments can provide.[82]

Housing subsidies are also a central element of housing enablement policies.[83] World Bank recommendations are that subsidy programs should be on appropriate and affordable scales, well targeted, measurable, transparent, and not distorting of the housing market.[84] The presence or absence of housing subsidies (and tax incentives) cannot be understood outside the broader framework of overall fiscal policy. Similarly, investment of capital in housing is part of overall government investment policy [percentage of gross domestic product (GDP)]. Other State legal measures will include control of interest rates, curbs on public expenditure, and stimulation of demand through public spending on housing, tax reliefs, etc. These can be either supply side (subsidizing producers), or demand side (supporting purchasers), such as through grants for new homes. Social housing is part of a market support system and an integral part of political largesse.

This enabling policy model must also consider the role of rented housing and its impact on other parts of the system, such as first-time buyers and social housing. Indeed, rent control and regulation measures have been imposed by governments of all hues since the 1800s. Kemeny argues that genuine market competition can be fostered by encouraging cost rental housing to compete directly with profit renting, thereby dampening rents, raising housing standards and increasing security of tenure. Segregating cost renting into a state-run public rental (or social housing) sector shelters private renting from competition.[85]

Some legal measures may involve controls on prices or rents, deemed necessary when the market fails to meet a social norm and the State should intervene. Statutory provision of social and affordable housing, with elaborate legal precedents and legislation on allocation, management, control, sale, and inheritance also play a significant role. However, the neoliberalist inspired contemporary "enabling housing subsidy regime" involves a retreat from public housing production, toward privatisation of such stock and abolition of subsidies.[86] While this approach generates a fundamental threat to the implementation of States international housing rights obligations, it may yet be possible to transpose such obligations onto its framework.

Regulation

There is a powerful interdependency between rights and regulation.[87] Regulatory norms that establish minimum standards and equality of access to goods and services are widespread.[88] In relation to housing, there are detailed legal regulations and regulatory systems on land use, housing occupancy and maintenance, building standards, housing costs, eviction procedures, and facilities and equipment, and almost all have legally enforceable sanctions for violations, and compensation for breaches. This regulation machinery seeks to protect, preserve, and promote the physical and mental health and social well being of people, control nuisances, prevent and control communicable diseases, and regulate privately and publicly owned dwellings in order to maintain adequate sanitation and public health.[89] Indeed, it can go so far as delimit and deny property rights, in some circumstances, such as extended rights of occupancy for tenants overriding the legal owners powers to sell. McCrudden has outlined the extent of measures and regulatory mechanisms across the contemporary world which act to achieve socially desirable outcomes, and in many cases override civil and property rights.[90]

The integration of international housing rights norms and jurisprudence into national housing regulatory systems represents the next step in the realization of these rights. Thus, all draft legislation on housing systems must be housing rights proofed. House planning and building regulatory agencies, such as local authority and institutional housing finance regulators can incorporate housing rights objectives into their regulatory systems. Equally, all development plans and zoning approvals could be required to demonstrate how they address housing rights criteria. Regulatory agencies could refer violations, as set out in the Limburg Principles and Maastricht Guidelines, to the courts to be adjudicated and appropriate sanctions enforced for violations of housing rights across all elements of housing systems.

Governance

Of course, the possibility of using command based techniques of regulation and control runs into an obvious hurdle once we move to the supranational level of public international law housing rights. Enforcement legitimacy still requires locally accepted institutions and norms. Some new approaches such as the Open Method of Coordination of the E.U. have sought to overcome this problem, where internationally accepted guidelines are consolidated into agreed national plans, in areas of employment, pensions, and social inclusion.[91]

But there is an established international consensus on the adoption of housing rights and the internalization of associated supranational standards into domestic law and policy. The current monitoring and enforcement systems rely on cooperation and persuasion, as the use of sanctions on noncompliant States might lead to political conflict. However, States responses to existing monitoring, in terms of lists of individual measures adopted, obscure policy claims and creative compliance statements in UN and other monitoring reports, fail to address the nature of the holistic obligation in advancing housing rights. The opportunity for individual complaints directly to the UN monitoring agency could be valuable.[92]

Effective monitoring of national housing systems, with their diverse elements requires a type of "governance" approach. The idea of governance was developed by the World Bank to describe the "*process by which authority is exercised in the management of a country's economic and social resources for development, and the capacity of governments to design, formulate and implement policies and discharge functions*."[93] It involves taking a perspective from outside the State, to effectively observe and evaluate progress. Governance "*describes the hybridity of legal interferences within a society*."[94] It accepts a fusion of public and private institutions and brings an approach to public institutions which are oriented toward efficiency and output in achieving goals.

In many ways this model of supranational governance, evaluating the outcomes of institutions, laws and other measures of

States in terms of results is appropriate to the monitoring and development of housing rights. The template for this approach, being results oriented, is less concerned with actual laws and measures, but how they ensure that the objectives of housing rights, the provision of decent and affordable housing for all, is achieved. An obligation of results, rather than obligation of conduct in the implementation of housing rights is required. The recent jurisprudence from the Council of Europe in the *FEANTSA v. France*[95] case, outlined earlier, is developing this approach in relation to laws, policies, and measures applying to all aspects of housing systems. Housing rights can provide a basis for the evaluation and restructuring of construction, planning, land use, engineering infrastructure, housing finance, housing standards, nondiscrimination, affordability, subsidies and social housing provision, within the national and local housing regulatory systems.

Conclusions

In modern societies housing rights jurisprudence is growing in its content, relevance and sophistication, reflecting new principles of personal and social development, as well as the influences of public international human rights law. State action is transcending traditional civil and political rights guarantees toward giving effect to contemporary expectations, through legal and other intervention in housing systems.[96] Housing rights now need to be integrated, not just into political policies and laws, with their traditional emphasis on social housing, but into the regulation frameworks of all elements of housing systems. This may provide an appropriate basis for the evolution of an effective governance model for the advancement of these rights.

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Endnotes

[1]See Doling and Ford (2003).
[2]There are currently an estimated 10.4 million refugees and as many as 25 million uprooted civilians in their own countries, so-called internally

displaced persons. See UNHCR: The U.N. Refugee Agency, http://www.unhcr.ch/ (last visited April 3, 2008).

[3]See Woods and Lewis (2005) and Kenna (2008a).

[4]See Pierre and Stephenson (2008), describing how 200,000 people were displaced and evacuated to distant, unfamiliar regions without housing assistance, or the means to return to their communities or reunite with their families.

[5]See http://www.bloomberg.com/apps/news?pid=20601087&sid=ap42s_XrP58Q&refer=home

[6]Davis (2004, 2006).

[7]See Committee on the Global Financial System, Housing Finance in the Global Financial Market (Bank for International Settlements, CGFS Papers No. 26, 2006), available at http://www.bis.org/publ/cgfs26.htm

[8]See Marcuse, P. and Keating W.D., "The Permanent Housing Crisis: The Failures of Conservatism and the Limitations of Liberalism," in Bratt et al. (2006), A Right to Housing, (Temple University Press, Philadelphia).

[9]Ibid., p. 139.

[10]See UN Press Release October 23, 2008. http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/2FC845D6FF54A6F0C12574EB00342538?OpenDocument

[11]McColgan, A. (2003); UN Doc. E/CN.4/2003/55. Economic, Social and Cultural Rights, Women and adequate housing. See also Centre on Housing Rights and Evictions (COHRE) Women and Housing Rights. Geneva: COHRE; Farha (1998), Westendorp, I. Women and Housing: Gender makes a Difference. Antwerp, Intersentia.

[12]Craven (1995) and iEde et al. (2001).

[13]Droit au logement opposable (DALO) Act 2007.

[14]See for example Government of South Africa and others v. Grootboom and others, CCT11/00 2001 (1). SA 46 (CC), October 4, 2000, 2000 (11) BCLR 1169 (CC) where the court required the public authorities to consider the needs of homeless people in temporary accommodation, but which did not involve any increase in resources directed to poor housing generally.

[15]See Ponce-Sole (2006), Land Use Law, Housing and Social and Territorial Cohesion. Denver, Rocky Mountain Institute.

[16]See Bryson, D.B. "The Role of Courts and a Right to Housing" in Bratt et al., A Right to Housing, (2006; Temple University Press, Philadelphia).

[17]Universal Declaration of Human Rights, UNGA Resolution 2200A (XX1) UN Doc A/810. Adopted and proclaimed by General Assembly resolution 217 A (III) of December 10, 1948.

[18]This Convention was signed by the United States on October 5, 1977, but it has not yet been ratified. For details of ratifications see websites: http://www.unhchr.ch/html/menu3/b/a_cescr.htm and http://www.unhchr.ch/pdf/report.pdf

[19]ICESCR Covenant, Article 2. See also Alston, P. and Quinn, G. "The Nature and Scope of States Parties Obligations under ICESCR," HRQ, 9, 156–229 (1987).

[20]General Comments are issued by the monitoring UN Committee on Economic, Social and Cultural Rights to provide clarification on the obligations. See UN Doc.E/1991/23. (1991) UNCESCR. General Comment No. 4. The Human Right to Adequate Housing. See also General Comment No. 7 on The Rights to Adequate Housing—forced eviction UN Doc. E/1998/22 Annex IV.

[21]See for instance, General Comment No. 5, on persons with disabilities—UN Doc. E/1995/22; General Comment No. 6, on the economic, social and cultural rights of older people—UN Doc. E/1996/22; General Comment No. 14, on the right to the highest attainable standard of health—UN Doc. E/C.12/2000/4. See also UN Convention on the Rights of Persons with Disabilities. Article 28—Adequate standard of living and social protection. Available at http://www.un.org/disabilities/convention/conventionfull.shtml

[22]UN CEDAW adopted by the UN General Assembly (Resolution 34/180 of December 18, 1979) entered into force on September 3, 1981. See website: http://www.un.org/womenwatch/daw/cedaw/states.htm

[23]Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of November 20, 1989 entered into force September 2, 1990. See website: http://www.unhchr.ch/html/menu3/b/k2crc.htm

[24]Adopted by the UN General Assembly in resolution 43/181 on December 20, 1988.

[25]Convention relating to the Status of Refugees, Adopted on July 28, 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of December 14, 1950 entered into force April 22, 1954, in accordance with Article 43, as amended by the New York Protocol of January 31, 1967.

[26]For a fuller compilation of these instruments see for instance: Leckie (2000); UNCHS, Housing rights legislation: Review of international and national legal instruments: available at www.unhabitat.org/programmes/housingrights/; Kenna (2005): For details of the international standards on housing rights see UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to nondiscrimination at http://www2.ohchr.org/english/issues/housing/standards.htm

[27]This is not the same organization as the European Union. See Council of Europe, About the Council of Europe, http://www.coe.int/T/e/Com/about_coe/-giving a brief summary of the Council, its history, and its aims.

[28]Turin, 18.X.1961, Council of Europe, European Treaty Series—No. 35; European Social Charter (Revised), Council of Europe, Strasbourg 3/5/1996. The binding nature at national level of the Charters depends on whether a dualist of monist legal systems pertains, but many dualist States have incorporated the Charter (or parts of it) into national law. See Harris and Darcy (2001), Samuel (1997), and De Burca and De Witte (2005).

[29]See website: http://conventions.coe.int/treaty/en/Treaties/Html/005.htm

[30]See Housing Rights: The Duty to Ensure Housing for All. CommDH/IssuePaper(2008)1 Strasbourg, 25 April 2008. Available at: https://wcd.coe.int/ViewDoc.jsp?id=1292391&Site=CommDH

[31]Part V of Article E of the Charter states: "The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status."

[32]Article 13.

[33]Article 15.

[34]Article 17.

[35]Article 16.

[36]Article 19.

[37]Article 23.

[38]For a detailed examination of these obligations see Council of Europe, European Committee on Social Rights, European Social Charter (2003) (revised) Conclusions 2003—Volume 1 (Bulgaria, France, Italy); Conclusions 2003—Volume 2 (Romania, Slovenia, Sweden). Strasbourg: Council of Europe Publishing, October 2003.

[39]States which had accepted Article 31 in full or in part at October 2007 were Andorra, Finland, France, Italy, Lithuania, The Netherlands, Norway, Portugal, Slovenia, Sweden, and Ukraine. See website:

http://www.coe.int/t/e/human_rights/esc/1_general_presentation/Provisions_en.pdf

[40]See Council of Europe, Form for the reports to be submitted in pursuance of the 1961 European Social Charter and the 1988 Additional Protocol adopted by the Committee of Ministers on 26 March 2008. Available at: http://www.coe.int/t/e/human_rights/esc/3_reporting_procedure/1_state_reports/FormESC2008_en.asp#TopOfPage. See also Brillat, R., "The Supervisory Machinery of ECS: Recent Developments and their Impact," in De Burca and De Witte (eds.) (2005); Churchill and Khaliq (2004). See website: http://conventions.coe.int/treaty/en/Treaties/Html/158.htm. For summaries of the decisions on the merits of collective complaints registered between 1998–2008 see http://www.coe.int/t/e/human_rights/esc/7_Resources/CCSummariesMerits_en.pdf

[41]Complaint No. 39/2006. para. 55.

[42]See http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC39Merits_en.pdf

[43]Decisions of the ECtHR are available at http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en

[44]See Moldovan v. Romania (2005) 44 EHRR 16; Marzari v. Italy (1999) 28 EHRR CD 175; Botta v. Italy (1998) 26 EHRR 241; Lopez-Ostra v. Spain (1991) 14 EHRR 319; Geurra v. Italy (1998) EHRR 357.

[45]See Kenna (2008b) and Mowbray (2004).

[46]Marzari v. Italy (1999) 28 EHRR CD 175.

[47]Marzari v. Italy (1999) 28 EHRR CD 175 at 179.

[48]Lopez-Ostra v. Spain, (1991) 14 EHRR 319.

[49]Geurra v. Italy (1998) EHRR 357.

[50]Fadeyeva v. Russia (2007) 45 EHRR 10.

[51]Moreno-Gomez v. Spain (2005) 41 EHRR 40.

[52]See Muller v. Austria (1975) 3 DR 25; Gaygusuz v. Austria (1996) 23 EHRR 364; Feldbrugge v. The Netherlands (1986) 8 EHRR 425; Koua Poirrez v. France (2005) 40 EHRR 34.

[53]See for example Telyatyeva v. Russia, App. No. 18762/06, where the delay of almost two years by a local authority in executing an order from a local court, holding that the applicant's right to housing amounted to a possession under ECHR Article 1 of Protocol 1.

[54]See Kenner (2003).

[55]Council Regulation 16 12/68, art. 9, 1968 O.J. (L257) 2 (EEC), amended by Council Regulation 2434/92 1992 O.J. (L245) 1. See Case 249/86, Commission v. Germany, 1989 E.C.R. 1263; Case 63/86, Commission v. Italy, 1988 E.C.R. 29.

[56]See Council Directive 2000/43, 2000 O.J. (L180) 22. Article 13 of the Amsterdam Treaty conferred to the European Community the powers to take measures to fight discrimination on grounds of sex, race/ethnic origin, religion/belief, disability, age, and sexual orientation.

[57]See Council Directive 2004/113, 2004 O.J. (L373) 37, 38 (EC) (implementing the principle of equal treatment between men and women in the access to and supply of goods and services).

[58]See Report from the Commission on the Implementation of Council Directive 93.13.EEC of 5 April 1993 on Unfair Terms in Consumer Contracts, COM (2000) 248 final (April 27, 2000)

[59]Charter of the Fundamental Rights of the European Union, art. 34(3), Dec. 18, 2000, 2000 O.J. (C364) 1. The Charter has now been incorporated into Part II of the Treaty Establishing a Constitution for Europe, Oct. 29, 2004, 2004 O.J. (C310) 41 in force from 1/12/09.

[60]COHRE (2002); UN Doc. E/CN.4/2005/48. Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, (Miloon Kothari) to the UN Commission on Human Rights, March 3, 2005; See also UNCESCR Conclusions and Reports at website: http://www.unhchr.ch/html/menu2/6/cescr.htm; Much work has been carried out on defining the specific rights contained in the Covenant especially by the U.N. Committee on Economic, Social and Cultural Rights in its Conclusions and Reports. See generally Office of the High Commissioner for Human Rights, Committee on Economic, Social, and Cultural Rights, http://www.unhchr.ch/html/menu2/6/cescr.htm (listing examples of Committee on Economic, Social, and Cultural Rights document); Donnelly and Howard (1988); Gupta et al. (1994).

[61]Government of South Africa and others v. Grootboom and others, CCT11/00 2001 (1) SA 46 (CC), October 4, 2000, 2000 (11) BCLR 1169 (CC); Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v. City of Johannesburg and Others (24/07) [2008] ZACC 1; 2008 (3) SA 208 (CC) (February 19, 2008).

[62]For a discussion on the role of law viv-a vis other systems see Luhmann (2004).

[63]This acronym is widely used as a management tool to evaluate objectives for a project or plan.

[64]UN Doc. E/EN4/2000/47. Report of Secretary General on indicators and benchmarks; UN Doc. A/CONF.157/PC/73. UNGA. Report of the Seminar on appropriate indicators to measure achievements in the progressive realization of economic, social and cultural rights. (Geneva, January 25–29, 1993); UN Doc. E/EN4/2000/47; UN Doc. E/C.12/1994/11; UN Doc. E/CN.4/Sub.2/1994/20; UN Doc. E/C.12/1991/SR.21; UN Doc. E/CN.4/Sub.2/1991/15; Round-Table Discussion Organized by the High Commissioner for Human Rights, Geneva, 25 March, 1998, Report by Office of the High Commissioner for Human Rights, Geneva, 1998; UNCHS. Official UN Guidelines for monitoring progress in implementing the Habitat Agenda. http://www.urbanobservatory.org/agenda/ Housing and Urban Indicators. Report of the Secretary-General. UN Doc. A/CONF.165/CRP; UN Millennium Development Goals Indicators at http://mdgs.un.org/unsd/mdg/Host.aspx?Content=Indicators/OfficialList.htm; Methodology for Monitoring the Human Right to Adequate Housing. The Housing and Land Rights Network "Toolkit." Housing and Land Rights Network at http://www.hlrn.org/english/home.asp. See also Leckie (1998), COHRE (2002), Gallagher (2000), Green (2001), Bayefsky (2001), Chapman and Russell (2002), and Alston and Crawford (2000).

[65]UN Doc. E/C.12/1991/SR.21. Report of the Sixth Session. para 17.

[66]Ibid., para 150.

[67]Robertson (1994).

[68]State obligations, indicators, benchmarks and the right to education, background paper submitted by Paul Hunt, UN Doc. E/C.12/1998/11/at 3 (July 16, 1998).

[69]UN Doc. E/C.12/1994/11. Report of the 19th Session. State Obligations, indicators, benchmarks and the right to education, para 4.

[70]Chapman (1996); see also the arguments advanced by Rubenstein L.S. in Human Rights Quarterly 26.4 (2004) 879–881 on this topic.

[71]Limburg Principles on the Implementation of the ICESCR UN Doc. E/CN.4/1987/17.

[72]Maastricht Guidelines on Violations of Economic, Social and Cultural Rights. HRQ, 20(20), 691–704 (1998). See also Housing and Land Rights Network, (Habitat International Coalition) Housing Violations database: http://www.hlrn.org/index.php

[73]See Woods and Lewis (2005).

[74]See Angel (1997), at p. 74.

[75]See Angel (1997), at p 19.

[76]Ibid, p. 95.

[77]De Soto (2000).

[78]Ibid., but see Geoffrey Payne (ed.) (2002). Land Rights and Innovation: Improving Tenure Security for the Urban Poor (challenging De Soto's views on grounds of the cost and pace of formal titling, the existence of a continuum of tenure categories, and the suspicion of the poor toward banks). See generally Woodruff (2001), (suggesting the costs of adjudicating claims may abrogate the gains from titling); Joe Flood, Secure Tenure: Global Definition and Measurement (Paper to European Network of Housing Researchers Conference, Vienna, 2002) (explaining that property and tenure rights in Europe grew from feudal and bourgeois concerns and mobilizing the capital of the middle class, and not from any desire to tap the capital controlled by the poor).

[79]Ibid., Chap 8.

[80]Buckley and Kalarickal (2006).

[81]See for example Housing Regulation in Victoria—Building Better Outcomes (2005). http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/VCEChousingfinalreport/$File/VCEC%20housing%20final%20report.pdf

[82]See World Bank (1991), p 1; see also UNECE, Compendium of Model Provisions for Building Regulations (Geneva, UNECE, 1996) ECE/HBP/81/Rev.1.

[83]See Angel (2000), at Chap. 9.

[84]See Mayo (1994). Of course there are many measures which distort the "perfect market" in housing such tax incentives, rent restrictions etc.

[85]See Kemeny, J. From Public Renting to the Social Market: Rental policy strategies in comparative perspective. (London: Routledge, 1995).

[86]Cammack (2002), "Attacking the Poor," New Left Review, 13, 125.

[87]See Morgan (2007, 2006).

[88]Sunstein (1990).

[89]Angel (2000), World Bank, pp. 155–160.

[90]McCrudden (2007).

[91]See http://ec.europa.eu/employment_social/spsi/the_process_en.htm

[92]The Optional Protocol allowing individual complaints to UN monitoring agencies already applies to breaches of civil and political, children's, women's and other rights and is now extended to economic, social and cultural rights. See http://www2.ohchr.org/english/issues/escr/intro.htm

[93]See World Bank, Governance: The World Bank's Experience (Washington 1994) p. XIV. The concept was first used in World Bank. Sub-Saharan Africa: From Crisis to Sustainable Growth (Washington 1989).

[94]See Mollers, C. European Governance: Meaning and Value of a Concept. Common Market Law Review, 43, 313–336, 2006 at 316.

[95]See http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC39Merits_en.pdf

[96]The Vienna Declaration (1993) states that both civil and political rights and socioeconomic rights, such as housing rights are "universal, indivisible, interdependent and interrelated." See The Secretary-General, Report of the Secretary General on the Vienna Declaration Program of Action, U.N. Doc. A/CONF 157/24 (Part I) (October 13, 1993).

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