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Housing and Human Rights (MS no. 699)

Abstract

Housing meets a primary human need and housing rights are now enshrined housing rights within international human rights law, regional and constitutional legal instruments. These rights extend beyond shelter, and encompass adequacy, affordability of housing and security of tenure. Enforcing international housing rights has developed a corpus of jurisprudence, with key concepts of human dignity, minimum core obligations and progressive realization of rights being interpreted in local housing and legal contexts. Today, market and commoditisation approaches dominate the debate on housing shadowing housing rights discourse. Yet, housing rights provide a moral compass for housing law, policy and systems.

Key Words

Housing, housing rights, shelter, evictions, security, adequacy, affordability, United Nations, Council of Europe, minimum core obligations, dignity, progressive realization.

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Housing and Human Rights (MS no. 699)

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Glossary

Housing rights The range of State obligations in international, regional and national law which ensures a right to housing and increasing housing standards is the right of every woman, man and child.

General Comment 4 UN clarification on State obligations stipulating that housing rights encompass legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.

Progressive Realization The principle of progressive realization recognizes that all economic, social and cultural rights will generally not be achieved in a short time, but establishes clear obligations for States to move as expeditiously and effectively as possible towards that goal, without any deliberately retrogressive measures.

Housing Adequacy The range of housing standards required to satisfy the obligations contained within international housing rights obligations.

Commodification In relation to housing – the transformation of housing as a home to a commodity of exchange

or investment, where its value is determined by the market.

I. Introduction

One of the primary needs of all human beings is housing. It involves shelter - essential for survival and human dignity, a place to live, a base for the development of children and the household - home. Housing provides a psychological space for nurture, privacy, personal development, family life and a sense of personal space. The modern concept of “home” builds on all these elements of adequate and appropriate housing, which form the core of housing rights.

The central position of housing has prompted States and political parties at national and international level to recognise, codify and guarantee housing rights in law. These rights have been acclaimed by international organisations, such as the United Nations (UN), Council of Europe (CoE), Organisation of American States (OAS) and European Union (EU), as well as more than fifty constitutions around the world. They are affirmed in numerous international declaratory and policy documents, as well as national laws, jurisprudence and

the housing policies and processes of many countries.

International housing rights derive from international human rights instruments and offer a moral compass in the development and evaluation of housing law, policy and systems. Housing rights obligations transcend political regime types and relative primacy or hegemony of market or State provision of housing. Of course, neo-liberal and social democratic governments accept the market as the primary provider of housing, with government intervention regulating excesses of the market and intervening in cases of market failure or negative market externalities. The right-to-housing default position considers that it is government's first obligation to ensure that all are decently housed, with the market managed and regulated in ways subservient to that goal. The UN Special Rapporteur on Adequate Housing has pointed out: *"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."*

The Universal Declaration on Human Rights (UDHR) (1948) placed the right to housing within the right to a standard of living adequate for health and well-being. It is fundamental to the enjoyment of all economic, social and cultural rights. Access to employment, training, education, absence of discrimination, crime or segregation, and enjoyment of prevailing opportunities and communal facilities are dependant on the realization of housing rights. Indeed, people who experience homelessness, poor housing and shelter poverty are often victims of

violence and crime as well as persistent poverty. Social rights of participation and political rights are often linked to housing status, with enfranchisement often related to home ownership or housing history, address, as well as denial of such participation to homeless people.

Housing provides a gateway to other opportunities. Since housing is so central to individual, family and community life, it determines many of the relationships and opportunities which people can enjoy. These include the availability of employment options, health-care services, schools, child-care centres and other social facilities, services, materials, facilities and infrastructure. Good housing conditions are a prerequisite to good health, which particularly affects the development of all aspects of children's lives. The location and quality of the housing environment are key features in the development of healthy and sustainable communities. *The Global Strategy for Shelter to the Year 2000* stated: *"Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost"*.

Housing also has an emotional and symbolic significance on perceptions of one's self, place in the community, and in today's world can relate to status in society. Primarily, housing as home offers a sanctuary from the world and a place to call home, even within a world dominated by media and financial pressures to view housing as an asset or a commodity. Indeed, one of the clearest manifestations of poverty is the lack of

and adequate and affordable home. People who lack safe, secure and healthy housing with basic infrastructure, such as piped water and adequate sanitation suffer from “housing poverty”.

Nature of Housing Rights

Housing rights involve more than shelter, which represents one element. Indeed, it often takes primacy in situations of housing crisis, poverty or natural catastrophe. However, UN and other jurisprudence has developed the understanding of housing rights to include legal security of tenure, availability of services, materials and infrastructure, affordable housing, habitable housing, accessible housing, housing in a suitable location, housing constructed and sited in a way which is culturally adequate. It also involves the absence of forced evictions which result in individuals being rendered homeless or vulnerable to the violation of other human rights.

Housing rights obligations require that people have security of tenure, with no arbitrary evictions, fair mortgage terms and tenancy conditions as well as the absence of segregation, crime or discrimination. Tenure includes rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Regardless of the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.

Adequacy and Habitability of Housing

All beneficiaries of a right to housing must enjoy habitability which facilitates a life of human dignity. The human right to adequate housing has been defined by the UN Special Rapporteur on Adequate Housing as the “*right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity*”.

Defining housing adequacy has been contested by many States, often seeking to justify existing housing conditions as adequate. The old arguments surrounding adequacy which differed widely between warm and cold climates, developing and modern economies, purchased and low cost rented housing, have been superseded by universal and holistic standards applicable to all States. Adequate and habitable housing must be of a decent physical and space standard, structurally sound, physically secure, weather and water-tight, serviced with adequate electrical, water, heating and sewage systems, free from dangerous hazards, such as asbestos and lead, vermin and pests, structural hazards and disease. An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.

Affordability

Affordable housing has been defined by the UN to require that personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials. The CoE Committee for Social Rights has defined affordable housing as a situation when the household can pay the initial costs (deposit, advanced rent), the current rent and/or other costs (utility, maintenance and management charges) on a long term basis, and still be able to maintain a minimum standard of living, as defined by the society in which the household is located.

II. Sources of human rights for housing

International Organisations

The *Universal Declaration of Human Rights* (UDHR), adopted by almost all States, recognises rights to housing in Article 25;

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.

Similarly, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), of 1966, now ratified by almost 150 States (though not the US), recognises the right to housing.

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

Ratifying States are required to recognize, respect and protect and fulfil these housing rights, meet “minimum core” obligations, ensure non-discrimination and direct legislative measures, appropriate policies and the maximum of available resources towards a progressive realisation of these rights. *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.

Further relevant UN instruments include the *UN Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), the *Convention on the Rights of the Child* and the *UN Convention Relating to the Status of Refugees* (1951).

Many other international instruments setting out rights to housing have been ratified by countries around the world. The *American Declaration on the Rights and Duties of Man* (1948) states:

Art. 11. Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care to the extent permitted by public and community resources.

Art. 23. Every person has the right to own such property as meets the essential needs of decent living and helps maintain the dignity of the individual and of the home.

Article 34 of the Charter of the Organization of American States provides for a right to housing:

The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals:

... k) Adequate housing for all sectors of the population;

The African Union (formerly the Organisation of African Unity) in its *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (2003) states:

Article 16 - Right to Adequate Housing

Women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, State Parties shall grant to women, whatever their marital status, access to adequate housing.

The *Habitat Agenda* states that "*Within the overall context of an enabling approach, Governments should take appropriate action in order to promote, protect and ensure the full and progressive realization of the right to adequate housing*".

Goal 7 of the UN *Millennium Development Goals* (2000) involves halving, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation, and by 2020, to have achieved a significant improvement in the lives of at least 100 million slum-dwellers.

Regional Organisations

Council of Europe

Housing rights are advanced through the Council of Europe's *European Social Charter* and *Revised Charter* (RESC) and in an oblique way through the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR) within Articles 3, 6, 8, 13, 14 and Article 1 of Protocol No. 1.

The *European Social Charter* and RESC contain important rights to social and medical assistance for those without adequate resources, establishing housing obligations in relation to physically and mentally disabled persons, children and young persons, migrant workers, older people, families and people experiencing poverty or social exclusion. Article 31 of the RESC establishes a right to housing:

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.

In *FEANTSA v. France*, the CoE Committee for Social Rights established 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”.

European Union

While the European Treaties do not refer directly to a right to housing, much EU social policy impacts on housing rights and housing policy. EU Regulations in the 1960s and 1970s ensured that migrating non-national workers and their dependents were entitled to the same social benefits, including access to housing, as nationals of Member States on the principle of non-discrimination. There are legally defined steps at the EU level to harmonize the conditions of asylum-seekers across Europe, including to standardize housing conditions, to recognize the rights and status of third-country nationals, and to develop a common policy on illegal immigrants.

Article 34(3) of the EU Charter of Fundamental Rights, states:

In order to combat social exclusion and poverty, the Union recognises 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.

Housing rights are also advanced in the Race Directive (2000), Gender Directive and Unfair Contract Terms Directive, while the European Parliament has adopted resolutions advancing housing rights and a European Charter for Housing.

Enforcing International Housing Rights Instruments

There is a growing jurisprudence at international and national level on housing rights as human rights. A range of quasi-judicial and judicial bodies constantly adjudicate on the nature, extent, application and violation of these rights, although some are promoted primarily through State policies and processes. Aspects of housing rights are regularly adjudicated upon in courts throughout the world, including in the US. Clarification on the contents and obligations of housing rights, including the concepts of minimum core obligations, progressive realisation of rights according to available resources and violations of rights, are now widely understood and accepted in the context of the right to an adequate standard of living.

Human dignity, minimum core obligations of States and a progressive realization of these rights have become key legal concepts in advancing housing rights. Housing rights, like human rights generally, are sometimes seen as rooted in the concept of human dignity. The

principle of human dignity is rooted in religious teachings across the world. However, some argue that in the contemporary interpretations of legal texts containing the term, the meaning of dignity is highly context specific, varying significantly from jurisdiction to jurisdiction and (often) over time within particular jurisdictions. Advancing housing rights on the basis of respect for human dignity alone can amount to a very meagre level of enjoyment. The rising norms and legislation for housing occupancy and standards, and the provision of social housing may surpass minimalist interpretations of housing rights.

The UN has developed the concept of minimum core obligations on States in the implementation of rights as involving at the very least, minimum essential levels of each of the rights involved. In a situation where any significant number of individuals is deprived of basic shelter and housing the State party is failing to discharge its obligations. under the Covenant. Article 2 (1) of the ICESCR obligates each State party to take the necessary steps "*to the maximum of its available resources*".

Article 2 of the ICESCR requires States to take steps "*with a view to achieving progressively the full realization of the rights recognized.*" The concept of progressive realization recognizes that all economic, social and cultural rights will generally not be achieved in a short time, but establishes clear obligations for States to move as expeditiously and effectively as possible towards that goal, without any deliberately retrogressive measures.

However, while there is significant recognition of housing rights within

international public law, this does not yet translate everywhere into effective domestic legislative and policy measures which implement international housing rights obligations. The impact of housing rights based on international public law depends on whether States adopt a dualist or monist approach to the applicability of such law within their internal legal system.

Much legal controversy involves the justiciability or enforceability in national courts of internationally defined housing rights. Issues arise in relation to separation of powers between the legislature and judiciary, resource allocation powers of judges, as well as obstacles of costs and access to courts arise. Of course, courts uphold and penalize breaches of many codified, statutory and established socio-economic rights. Indeed, making housing rights judicially enforceable can encourage governments to dedicate financial and policy resources to meeting housing needs. The UN views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. At an international level possible penalties and sanctions for violations of housing and other rights have been developed within the *Limburg Principles* and *The Maastricht Guidelines*.

Constitutional and Statutory Rights

Many of the world's Constitutions refer to housing or housing rights. For instance, a right to housing is set out in Article 26 of the Constitution of South Africa (1996).

1. Everyone has the right to have access to adequate housing.

2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
3. No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

Courts have created a corpus of law establishing and consolidating these constitutional and statutory rights, with orders specifying State action to meet such obligations, including the notable case of *Government of South Africa and others v. Grootboom and others*. Many States have developed laws specifically granting housing rights, such as the *Housing (Scotland) Act 1987*, and the French DALO Act of 5 March 2007. Courts across the world have developed common law housing rights in areas of security of tenure, respect for home, non-discrimination, decent physical standards and fair procedures in evictions.

Some housing rights emanate from family protection laws, obligations to children, support for people with disabilities, older people, succession law, protection for homeless people and other groups, often arising from politically inspired general public policies.

III. Evaluation

a. dominance of commodification and market approaches for development of human rights to housing?

Housing has become increasingly regarded as a consumer good and an

asset across the world. Today, home-owners across the world are encouraged to view their home as an asset, a store of future and hereditary wealth and mortgage equity. Mass produced and commodified home-ownership is marketed, mortgaged and exchanged as the *lietmotif* of settled affluent family life, and status is often attributed to housing wealth. But access to housing within local market systems requires access to housing loans, thus integrating housing availability and affordability within the global financial system, determined largely by non-housing macroeconomic factors.

Globalisation of financial markets, with integrated housing finance have accentuated the commodification of housing. In this climate, market or price measures determine access, location, quality, size and value of housing rather than any measure of need or enjoyment of rights. International capital markets increasingly direct the availability of national mortgage loans and interest rates, facilitated by the encroachment of property law into housing, with emphasis on securitisation of loans, registration of property, division between public and private interests and so on.

Yet, housing markets are like any other asset markets, prone to booms and busts, and this has important consequences for States advancing housing rights. In any case, adequate housing has become unaffordable and inaccessible for significant numbers of households who are on low incomes, in temporary or unprotected employment, old, disabled, or otherwise excluded. State provision has diminished across all market economies, reducing the scope of States

to meet housing rights obligations. In this context, poor households have been forced to take out high interest sub-prime loans in many countries to secure adequate housing.

With the withdrawal of States from housing provision towards an enabling market system it is important that housing rights are advanced within all parts of these housing systems. Angel points out that housing systems contain five essential elements involving property rights, housing finance, residential infrastructure, regulation and subsidies/public housing.

b. Work on development of more meaningful concept of housing for human rights.

There are persistent challenges for housing rights advocates, in moving beyond the notion of housing rights from essentially the provision of social housing, to the integration of housing rights within the finance, legal, property, regulatory, infrastructural and other elements of housing systems. Housing rights must be mainstreamed within all these key elements of housing systems to be effective, although this can present many challenges. There are dangers in seeing access to mortgage finance and home ownership as a means of implementing housing rights rather than as elements of the housing system which must result in adequate, affordable appropriate and sustainable housing rights. For instance, without ensuring the full ambit of housing rights, moves towards increasing access to housing finance for those previously excluded could lead to unsustainable and unaffordable home ownership, with consequent evictions and homelessness.

Equally, calls for universal rights to shelter could result in dormitory style housing for all homeless people.

But there are some valuable interpretations on the intrinsic and core elements of housing rights, which transcend market and non-market systems. These can provide effective tools for deconstructing housing systems and creating a space for the effective and sustainable development of housing rights.

The CoE is developing precise and meaningful measures of housing rights obligations. In *FEANTSA v. France* the European Committee on Social Rights established the minimum core housing rights obligations for European States, addressing legal, budgetary, planning, social inclusion, equality, and administrative measures. The CoE Commissioner for Human Rights is also expanding the understanding of housing rights through publishing an *Issue Paper* and *Guidelines on Housing Rights*. Much work yet needs to be done to expand on the legal basis of housing rights, ensuring that clear, enforceable standards are adopted in the implementation of housing rights.

Of course, it is the rights bearers themselves who must ultimately define, advance and ensure the implementation of housing rights. The Participation and Practice of Rights Project, enabled tenants of a housing project in Northern Ireland to translate international housing rights norms to their own living conditions. Through a process of action research involving surveys, the residents established a quantifiable human rights 'baseline' of outstanding housing rights issues.

At another level, Fox raises the everyday importance of concept of home as a social, psychological, cultural and emotional phenomenon which has been recognised in some disciplines, but has not penetrated the legal domain. This reflects in many ways the position of housing rights, where the physical structures and capital values dominate the debate. Developing the concept of home as an encapsulation of housing rights (with some limitations) offers the possibility of developing a comparative, measurable and people-centred definition of housing in law.

Housing rights, adopted by almost all the States of the world are defined at international, regional and national level. They offer a legal discourse based on human dignity, advancing person-centred and other values. This provides a base of legal resources which can act to temper and refocus the commercial and commodity based interpretations of housing law, policies and systems. Indeed, this corpus of jurisprudence can also offer a child centred, people-centred and feminist critique of housing systems.

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