

THE ROLE OF LOCAL AND SUBNATIONAL GOVERNMENTS WITH RESPECT TO THE RIGHT TO ADEQUATE HOUSING

Summary of the Report of the Special Rapporteur on the right to adequate housing

In her first report to the Human Rights Council (A/HRC/28/62), the Special Rapporteur on adequate housing, Ms Leilani Farha, focuses on the role and obligations of subnational governments with respect to the implementation of the right to housing.

The report discusses challenges and opportunities for local and subnational levels of government as they engage with housing through administrative, programmatic, judicial and policy channels.

The Special Rapporteur underlines the fundamental responsibilities subnational and local governments have for implementing human rights. This is especially true when it comes to the right to adequate housing. Local governments have increasingly critical responsibilities not only with respect to the prevention of evictions but also for the implementation of positive measures required for the progressive realization of the right to adequate housing, including infrastructure development, land-use planning, upgrading of informal settlements, development and administration of housing and social programmes, market regulation and resource allocation.

Under international human rights law, human rights obligations extend to all levels of government. This means government authorities at all levels must exercise their authority consistently with the right to adequate housing. Local government is closest to community needs and therefore can play a central role in bringing to light the most critical housing needs and ensuring effective responses by all levels of government.

Context and challenges

The general trend since the 1990s has been toward decentralization of responsibilities especially with respect to housing. Decentralization has been promoted on the basis of ‘subsidiarity’, which asserts that public responsibilities should be exercised by the elected authorities who are closest to the people. In regards to housing, decentralization has been encouraged as a way to enhance participatory democracy, transparency and to allow for local innovation. However, the Special Rapporteur notes that this process has often focused on economic and political efforts, excluding human rights in the discussion and without ensuring that the right to adequate housing is embedded in the way policies and programmes are delegated.

At the same time, common challenges facing local governments charged with implementing housing rights include: lack of financial and human/technical resources; lack of human rights knowledge; limited administrative capacity; overlapping/unclear responsibilities; discriminatory practices against community “outsiders”. Those most affected when local governments are unable to meet their obligations are the most

vulnerable including people living in poverty, living in informal settlements, or homeless people, persons with disabilities, migrants, minority groups, and others.

The need for more accountability at international and national levels

International human rights mechanisms engage in direct dialogue with national level governments and tend to overlook key responsibilities of subnational bodies. The Special Rapporteur has learned that subnational governments often only indirectly experience treaty body monitoring review processes or are often not made aware of the conclusions or recommendations that could be essential for their own actions to ensure the implementation of the right to housing. Although the adequate housing mandate receives many allegations involving subnational governments, State responses rarely show whether communications have been shared with local authorities. Engagement of subnational level government is, however, feasible within the international system. Some States have engaged subnational governments during the Universal Periodic Review process, and special procedures have several opportunities to directly engage with regional and local governments.

The right to adequate housing has been implemented at the domestic level through policy measures and legislation as well as through constitutional recognition. Domestic courts are playing an increasingly important role in clarifying the obligations of sub-national governments. For example, in the well-known *Grootboom* case and subsequent cases, the Constitutional Court of South Africa has recognized that local governments, along with other levels of government, have obligations to progressively realize the right to adequate housing and to secure and allocate the resources necessary to fulfil their respective obligations. Extensive jurisprudence has also emerged in other courts, which often consider housing rights claims in relation to municipal and other sub-national levels of government. The Special Rapporteur is concerned, however, that despite these advances, many domestic courts have not applied domestic law consistently with the right to adequate housing, and even when courts have ordered appropriate remedies, some subnational governments have not implemented them.

Some emerging initiatives in relation to housing at the local levels, and access to justice

In the last few decades participatory initiatives have emerged to engage local governments, in particular through the concepts of the “human rights city,” and “the right to the city”. For instance, Seoul declared itself a human rights city in 2012, and has since adopted housing rights measures. Brazil’s City Statute Law demonstrates the importance of shifting urban design to focus on people, with local governments playing a central role. These initiatives complement the “right to the city,” a movement promoting the freedom to “make and remake our cities,” and values such as the social production of housing/habitat and the rights to “sustainable and equitable urban development” as set out in the 2005 World Charter on the Right to the City

Some initiatives have also shed light on the essential need to ensure human rights protection through independent mechanisms. At the local level, this can include ombuds offices, human rights commissions, and elected councils to address human rights complaints about housing and other related human rights. National housing plans should clarify the role of all levels of government and specific strategies to deal with housing at the subnational level are also crucial.

Key recommendations

The Special Rapporteur notes that effective implementation of the right to adequate housing cannot be achieved without the proactive involvement of local and subnational governments. Local governments are at a critical point of intersection between rights holders and complex systems of multi-level governance. That makes them central actors in the realization of the right to adequate housing within diverse domestic systems.

The Special Rapporteur calls for increased recognition of the role local and subnational governments play with respect to the realization of the right to adequate housing and offers several recommendations to various actors, in particular:

- When addressing adequate housing, international mechanisms should give further attention to the human rights obligations of different levels of government. Recommendations emanating from international human rights mechanisms should be communicated to local and subnational governments with requests for responses and follow-up action.
- The distribution of responsibilities for housing between different levels of government should be clearly delineated, jointly coordinated, and subject to independent oversight and review.
- Any processes of decentralization in relation to housing should be guided and informed by human rights, in particular the right to adequate housing. Transfers of responsibility for housing or other programmes from one level of government to another should be accompanied by a clarification of concomitant human rights obligations including requirements of monitoring and accountability.
- States should guarantee access to justice and effective remedies for violations of the right to adequate housing at the local as well as the national level.
- States should ensure subnational governments have resources and the capacity to meet human rights responsibilities.
- Cities and municipalities should consider adopting charters that explicitly guarantee the right to adequate housing and related rights.
- Civil society and community organizations as well as human rights institutions should work to establish better links between international, national and local initiatives to monitor the implementation of the right to adequate housing and ensure that the obligations of local and sub-national governments feature prominently in submissions to UN human rights bodies.

The report (A/HRC/28/62) is available in all UN languages at:
<http://www.ohchr.org/EN/Issues/Housing/Pages/AnnualReports.aspx>