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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha**

### *Summary*

The present report is submitted by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, in accordance with Human Rights Council resolutions 15/8 and 25/17. The report focuses on the roles of local and other subnational levels of government and considers how they can be fully engaged in the realization of the right to adequate housing. In the context of a trend toward decentralization of responsibilities, the report finds that while decentralization may have significant advantages, it must always be guided by human rights. Local and subnational governments should be cognizant of and accountable to the human rights obligations that go along with their growing responsibilities and States must ensure that they have the capacity and resources needed to fulfil those obligations.

While international human rights obligations extend to all levels of government, international human rights mechanisms tend to focus more on the role of national level governments. The Special Rapporteur emphasizes the importance of international human rights mechanisms engaging constructively with the responsibilities of local governments and finds that communications procedures and country missions provide positive opportunities in that regard.

The report finds that housing rights claims at the domestic level often address the role of local and other subnational governments and have generated contextualized understandings of the right to adequate housing. Drawing inspiration from emerging human rights initiatives bringing together cities and subnational governments, civil society, community-based organizations and human rights institutions, the report underscores the benefit of interactive relationships with local struggles for the realization of the right to adequate housing.

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## I. Introduction

1. In her report to the General Assembly (A/69/274), the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, identified the significant responsibilities of local and other subnational governments for key aspects of housing and related programmes. She noted that effective engagement with those levels of government was critical to promoting the implementation of the right to adequate housing. Given the importance of local and other subnational governments to all aspects of the mandate, she has decided to address that theme in her first thematic report to the Human Rights Council pursuant to resolutions 15/8 and 25/17.

2. In the present report, the term “local and other subnational levels of government” refers to everything from rural villages to large metropolitan areas, boroughs to provinces, and recognizes that there are usually multiple levels of local government within a single country.<sup>1</sup>

3. The Special Rapporteur solicited and received information and views on the issue from States, civil society and national human rights institutions.<sup>2</sup> She held an informal consultation in New York with civil society, a public consultation in Geneva with delegates of permanent missions, and a two-day consultation with experts in housing, human rights and local governance from around the world. The Special Rapporteur is grateful for the information and guidance received.

4. Over the last three decades, global trends toward decentralization, rapid urbanization and the creation of megacities, as well as a significant rise in displacement caused by conflict and natural disasters, and increased migration, have placed new and challenging responsibilities on local and other subnational governments with respect to housing. Effective strategies for the promotion and realization of the right to adequate housing must engage with and respond to those challenges.

5. International human rights obligations extend to all levels of government within their allocated sphere of responsibilities. International human rights mechanisms, however, interact primarily with national level governments. Trends toward decentralization and greater responsibilities for local and subnational governments have meant that States’ obligations under international human rights law rely increasingly on implementation by local and subnational government. There is a general concern that responsibilities may be transferred away from national level governments without a concomitant transfer of resources, knowledge, capacity and accountability for human rights obligations with respect to the right to adequate housing.<sup>3</sup>

6. While continuing to engage in direct dialogue with national level governments, the international human rights system must also engage constructively with challenges and developments at the local or subnational levels. That is particularly the case with respect to

<sup>1</sup> United Cities and Local Governments, *The role of local and regional authorities in the UN Development Agenda Post-2015*, December 2012. Available from [www.uclg.org/sites/default/files/Summary\\_The%20role%20of%20local%20and%20regional%20authorities%20in%20the%20development%20agenda%20post-2015.pdf](http://www.uclg.org/sites/default/files/Summary_The%20role%20of%20local%20and%20regional%20authorities%20in%20the%20development%20agenda%20post-2015.pdf).

<sup>2</sup> All responses to questionnaires are available from [www.ohchr.org/EN/Issues/Housing/Pages/Questionnaire-forwebsite.aspx](http://www.ohchr.org/EN/Issues/Housing/Pages/Questionnaire-forwebsite.aspx).

<sup>3</sup> In the present report, the term “responsibilities” is generally used to refer to domestically assigned authority or roles with respect to housing. The term “obligations”, on the other hand, refers to what is required for compliance with the right to adequate housing.

the right to adequate housing. Forced evictions and discriminatory exclusion from housing often result from decisions or policies adopted at the local or subnational levels. Moreover, local governments have increasingly critical responsibilities with respect to 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.

7. Important advances are being made in relation to human rights and the right to adequate housing at the local level. Civil society movements to promote and enforce the right to adequate housing are emerging in response to issues of local dimension, where communities are denied adequate housing and seek to build more inclusive cities and municipalities. Those movements can enrich international human rights and at the same time, international human rights standards and principles can strengthen and support the movements as well as community struggles for adequate housing and create the opportunity for enhanced local-international linkages.

8. The present report into local and other subnational levels of governments in relation to the right to adequate housing is intended as a first step toward a better understanding of the challenges and opportunities arising at that level. The Special Rapporteur hopes to continue the ongoing dialogue with States, civil society, human rights institutions and other actors over the course of her mandate to consider how, in the context of prevailing trends and diverse domestic systems, all levels of government can be fully engaged in the realization of the right to adequate housing.

## **II. International human rights framework**

9. The international human rights obligations of a State extend to all levels of government and to any exercise of governmental authority. “All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level — national, regional or local — are in a position to engage the responsibility of the State Party”.<sup>4</sup> That finds expression, in the context of federal States, in article 28 of the International Covenant on Economic, Social and Cultural Rights, and article 50 of the International Covenant on Civil and Political Rights which affirm: “The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions”.

10. The internal allocation of responsibilities for implementing the right to adequate housing is a matter for State parties to determine, but the allocation must be consistent with the obligation to ensure compliance with international human rights obligations.<sup>5</sup> The Committee on Economic, Social and Cultural Rights has indicated that “all administrative authorities will take account of the requirements of the Covenant in their decision-making”.<sup>6</sup> Hence, the wide range of housing policy and programme decisions often made at the local level, including budgeting, planning, zoning, allocation of benefits and publically funded housing units, the provision or regulation of basic services, rent subsidies, and any other decisions related to access to adequate housing, must comply with relevant, applicable human rights norms. In most cases a national housing strategy is required among

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<sup>4</sup> Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States Parties to the Covenant, para. 4.

<sup>5</sup> *Ibid.*, para. 4.

<sup>6</sup> Committee on Economic, Social and Cultural Rights, general comment No. 9 (1998) on the domestic application of the Covenant, para. 9.

regional and local authorities in order to reconcile related policies with the obligations under the Covenant.<sup>7</sup> The Committee on the Rights of the Child further clarifies that State parties must also ensure that local authorities “have the necessary financial, human and other resources to effectively discharge [their] responsibilities”.<sup>8</sup>

### **III. Responsibilities of local and other subnational governments in relation to the right to adequate housing**

11. There is significant diversity among States as to how responsibilities with respect to housing and related programmes are allocated among different levels of governments. Within a range of domestic contexts and unique histories, however, it is clear that local and other subnational levels of government usually carry critical responsibilities linked to the implementation of the right to adequate housing. As noted by UN-Habitat, national housing strategies require local level implementation, reviews of laws and regulations, planning, and financial instruments and formulation, mobilization of stakeholders, and adoption of local housing strategies drawing on local innovation and know-how.<sup>9</sup>

12. General patterns demonstrate that certain responsibilities are often exercised more effectively by national level governments while other responsibilities tend to be better suited to local governments. National level governments are often better placed to ensure a fair distribution of resources, so that areas with fewer resources and greater needs are not simply left to fend for themselves. National level governments usually have greater capacity to develop and enforce national standards, to monitor and compare programmes and outcomes in different regions and localities, to finance housing programmes, regulate mortgages and credit, fund housing subsidy and income support programmes, and oversee taxation and resource allocation. To varying degrees, national governments may also attempt to influence or direct the policies of local and other subnational governments through incentives, conditions, priorities or required outcomes linked to the provision of funding for locally administered programmes.<sup>10</sup>

13. Local governments, on the other hand, tend to be assigned responsibilities for provision and management of services such as water, sanitation, electricity and other infrastructure; land-use planning, zoning and development, which relates to decisions regarding evictions, displacement and relocation; implementing programmes to upgrade informal settlements and inadequate housing; enforcing health, safety, environmental and building standards; providing local emergency shelter; putting in place or implementing

<sup>7</sup> Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing, para. 12.

<sup>8</sup> Committee on the Rights of the Child, general comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child, para. 41.

<sup>9</sup> UN-Habitat Global Housing Strategy Framework Document. Available from [www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SHS/pdf/Workshop-Social-Inclusion\\_UN-Habitat.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SHS/pdf/Workshop-Social-Inclusion_UN-Habitat.pdf), para. 51.

<sup>10</sup> See, for example, the response to the questionnaire (see note 2 above) from the national human rights institution in Paraguay (Defensoría del Pueblo Paraguay), where national programmes are administered through nine regional offices that partner with municipal governments, civil society and private actors to identify the most vulnerable groups and determine appropriate actions. In the response to the questionnaire from the Rwanda Human Rights Commission, the national level government establishes strategies and policies in relation to housing which are then implemented by districts and sectors according to the terms of performance contracts. Local governments have the flexibility to develop partnerships with international donors, as well as with community organizations to build housing for the poor, genocide survivors, the elderly and other vulnerable groups.

disaster risk reduction and response policies; and regulating the use of public space. Even if programmes are designed and fully or partially funded by central governments, it is often local authorities that decide where housing will be built or upgraded, and determine who will be allocated housing units or receive social benefits or housing subsidy based on prescribed criteria.

14. In unitary States, central governments generally hold primary responsibility for planning, programming, regulation and funding of housing. Mortgage programmes, subsidies, cash transfer programmes and other measures to address lack of housing among vulnerable groups are managed nationally. Those programmes, however, rely on local implementation, allowing varying degrees of autonomy to regions and municipalities/districts or cities.

15. In federal systems, on the other hand, local or other subnational governments often have primary and autonomous responsibility for virtually all aspects of programmes and policies related to the implementation of the right to housing. The role of the national level governments in those situations may be largely one of leadership and coordination.<sup>11</sup> Germany, for example, has transferred all responsibility for housing to the Länder. The national level Government convenes an annual meeting of Länder which brings together key players and facilitates national coordination.

16. The allocation of responsibilities to subnational and local governments is rarely static. Various levels of government, development agencies, financial institutions, private actors, community-based organizations and other relevant stakeholders continually redefine the relationships among themselves in order to respond to new challenges or to improve the effectiveness of programmes and policies. While the reallocation of responsibilities may move in either direction — from the centre to the local level or from the local to the central Government — the general trend since the early 1990s has been one of decentralization.

17. Decentralization — the transfer of authority and responsibility for public functions from the central Government to intermediate and local governments — has been advocated as a means to enhance participatory democracy and transparency. It is generally promoted on the basis of the principle of “subsidiarity”, which asserts that public responsibilities should be exercised by those elected authorities who are closest to the people.<sup>12</sup> Decentralization has often been linked to privatization and market deregulation, but such phenomena need not be associated with decentralization and in fact, may run counter to the principle of democratization that is advanced as its primary benefit.

18. Three types of decentralization have generally been distinguished: a) political decentralization, which transfers power or authority away from the central Government; b) fiscal decentralization, which shifts financial resources to more local governments; and c) administrative decentralization, which moves the administration of programmes and policies to more local authorities. It is generally agreed that all three forms of decentralization need to occur together for successful outcomes, generally moving from transfer of political authority, through transfer of resources to transfer of administration.<sup>13</sup>

19. Decentralization has been strongly promoted in the area of housing. The Habitat Agenda, adopted at the second United Nations Conference on Human Settlements (Habitat

<sup>11</sup> See the questionnaire response from Germany (see note 2 above).

<sup>12</sup> UN-Habitat, *International guidelines on decentralisation and access to basic services for all* (2009). Available from <http://unhabitat.org/publications-listing/international-guidelines-on-decentralization-and-access-to-basic-services-for-all/>.

<sup>13</sup> International Council on Human Rights Policy, *Local Rule: Decentralisation and Human Rights* (Versoix, Switzerland, 2002).

II) in Istanbul in 1996, affirmed that “Governments should strive to decentralize shelter policies and their administration to subnational and local levels within the national framework, whenever possible and as appropriate”.<sup>14</sup> Proponents of decentralization in housing related programmes have argued that it enables local participation in housing management and decision-making, avoids excessive bureaucracy, allows sensitivity to local needs, draws on local capacities, increases transparency and local control and allows for more creative and innovative programming.

20. The experiences of decentralization in relation to human rights and the right to adequate housing, however, have been mixed. As Paul Lundberg noted, “the issue of human rights has not figured prominently in the ongoing discussion on decentralization”.<sup>15</sup> Reference to human rights obligations or the right to adequate housing is conspicuously absent, even from the International Guidelines on Decentralisation and Access to Basic Services for all<sup>16</sup> and the European Charter of Local Self-Government.<sup>17</sup> Decentralization and local governance initiatives from international or regional financial institutions such as the International Monetary Fund<sup>18</sup> and the Inter-American Development Bank,<sup>19</sup> United Nations agencies such as the United Nations Development Programme,<sup>20</sup> as well as from associations of local governments,<sup>21</sup> have focused on economic and political dimensions and participatory rights linked to decentralization. However, they have largely ignored the question of how States’ human rights obligations in relation to the right to adequate housing are to be applied to local governments that have taken on key responsibilities for programmes and policies.

#### **IV. Challenges to the implementation of the right to adequate housing by local and other subnational level governments**

21. The Special Rapporteur has identified a number of common challenges experienced at the local level with respect to the implementation of the right to adequate housing:

(a) Inadequate resources: The scarcity of financial resources, or the limited ability to tap into other funding sources besides national budget allocations, is a primary concern for local authorities with respect to the implementation of the right to adequate housing. While the responsibility for housing has been put in the hands of local or other subnational governments, resources to meet their housing rights obligations have not similarly flowed. Moreover, funding from national governments for local programmes is often not responsive to changing needs or crisis situations at the local level. Lack of

<sup>14</sup> A/CONF/165.14, Annex II, para. 66.

<sup>15</sup> Paul Lundberg, *Decentralized Governance and a Human Rights-based Approach to Development*, (United Nations Development Programme, 2004), p. 1. Available from [www.un.org/ky/index2.php?option=com\\_resource&task=show\\_file&id=3769](http://www.un.org/ky/index2.php?option=com_resource&task=show_file&id=3769).

<sup>16</sup> See note 12 above.

<sup>17</sup> European Charter of Local Self-Government (1985) and the Additional Protocol thereto (2009). Available from [www.ccre.org/en/papiers/index\\_chart](http://www.ccre.org/en/papiers/index_chart), and <http://conventions.coe.int/treaty/en/treaties/html/207.htm>, respectively.

<sup>18</sup> Annalisa Fedelino and Teresa Ter-Minassian, *Making Fiscal Decentralization Work: Cross-Country Experiences* (Washington, D.C., International Monetary Fund, 2010).

<sup>19</sup> Inter-American Development Bank, *Evaluation of the IDB’s Non-Sovereign Operations with Sub-National Entities: 2007–2010* (Washington, D.C., 2012).

<sup>20</sup> United Nations Development Programme, *A Users’ Guide to Measuring Local Governance* (UNDP Oslo Governance Centre, 2008).

<sup>21</sup> See UN-Habitat, *International guidelines on decentralisation and access to basic services for all* (see note 12 above) and the European Charter of Local Self-Government (see note 17 above).

resources can lead subnational governments to make decisions that negatively affect the realization of the right to adequate housing. For example, at the municipal level it is not uncommon for available land or property to be used as an asset for real estate development rather than for the provision of adequate housing.

(b) Insufficient knowledge and capacity regarding the right to adequate housing and related human rights: Local and other subnational government officials are often unaware of their obligations under international human rights law with respect to adequate housing and may at times lack any institutional or legislative framework of accountability for their decision-making. They may also lack institutional or technical capacity to administer programmes efficiently, to contend with corruption, to regulate land speculation, to ensure sustainable practices or to maintain and repair infrastructure.

(c) Overlapping, unclear and conflicting web of responsibilities: In countries with large and rapidly expanding urban and peri-urban populations, there is often a complex web of overlapping and colliding responsibilities between different levels of government and between local governments. It is very difficult to ensure accountability to human rights obligations if there is a lack of clarity about which levels of government are responsible for what. In many cases there is tension between the interests of national and local and other subnational governments regarding priorities. Those in need of housing are caught in the middle, with no level of government assuming responsibility. In some other cases, lack of clarity or multiple layers create power vacuums and can become a fertile ground for abuse of authority.

(d) Protectionism and discrimination: When communities define themselves around a local identity, there can be a tendency to exclude perceived “outsiders”, such as migrants, refugees, asylum seekers and ethnic, religious or other minorities. That often leads to discriminatory barriers in accessing and maintaining adequate housing and related programmes. Scapegoating, stigmatization and discrimination against homeless people can also be more pronounced at the local level, where communities may define themselves as homogeneous and coalesce to drive disadvantaged groups out of local communities.<sup>22</sup>

22. Viewed through a human rights lens, from the perspective of those whose right to housing is at stake, those common challenges facing local governments or housing providers can be seen as barriers to the realization of rights. Those who are disproportionately affected by the challenges identified tend to be the most marginalized groups – those whose right to housing is most at risk. It is those groups who suffer most when local governments lack capacity or resources, when there is an absence of local human rights accountability, when local government becomes protectionist and exclusionary, and it is those groups who often confront the most complex web of governmental decision-making and authority, with the least information available to them.

23. The situation of residents of informal settlements in many cities around the world illustrates how allocation of responsibilities among different levels of government plays out in peoples’ lives. For example, a recent study considers the situation of residents of the Mukuru settlement in Nairobi. They live in windowless shacks on privately held land without sewage or water infrastructure. They have been unable to determine title through local governments and therefore lack security of tenure, rendering them ineligible to apply for basic water, sewers or electricity. With the Kenyan Constitution now recognizing “the right to accessible and adequate housing and to reasonable standards of sanitation”, the

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<sup>22</sup> For more information, see the report of the Special Rapporteur on extreme poverty and human rights (A/66/265) and the report of the Special Rapporteur on the human right to safe drinking water and sanitation (A/HRC/21/42).



challenge for local residents is to claim their rights within a complex web of regulatory schemes and decisions applied by an array of governmental actors.<sup>23</sup>

24. Homeless people have faced similar struggles. An increasing number of cities, particularly in affluent countries, have responded to homelessness by criminalizing such acts as sitting, lying down, or sleeping in public, or by criminalizing those who help feed homeless persons.<sup>24</sup> Challenging that discrimination in the United States, for example, has meant addressing an array of laws and policies at multiple levels of government ranging from constitutional law and housing legislation to local bylaws and ordinances.<sup>25</sup>

25. The absence of human rights obligations in the priorities promoted by donor and international development agencies in the context of decentralization is also a challenge for the implementation of the right to adequate housing. For instance, in Indonesia, the International Monetary Fund, the World Bank, the Asian Development Bank, the United Nations Development Programme and other donor agencies,<sup>26</sup> at the turn of the millennium, actively promoted decentralization without sufficient attention to human rights.

26. As noted by the former Special Rapporteur on adequate housing in the report on her mission to Indonesia (A/HRC/25/54/Add.1), as a result of decentralization, significant powers have been partially devolved to the provinces, districts and municipalities. However, the decentralization of planning and land administration did not appear supported by institutional capacity, resources or organizational tools (paras. 10–11). During her mission she identified many of the obstacles to the implementation of the right to adequate housing associated with decentralization when it is not properly informed by human rights, such as “the fragmentation of programmes between various agencies and the inefficiencies of existing coordinating mechanisms” (para. 25) and the limited capacity of local governments to provide alternative housing to people who had been evicted from their homes (para. 51).

## V. International accountability

27. The primary dialogue between international human rights mechanisms and procedures is with the national Government. With some exceptions, noted below, that has generally resulted in less attention paid to the critical responsibilities of local and subnational governments in relation to housing. In the Special Rapporteur’s view, within the existing framework of dialogue between States parties and treaty body monitoring mechanism, there is room for considerably more engagement with the responsibilities of subnational governments in relation to the right to adequate housing.

<sup>23</sup> Jane Weru et al, “Confronting Complexity: Using Action Research to Build Voice, Accountability and Justice in Nairobi’s Mukuru Settlement”, World Bank Legal Review (forthcoming).

<sup>24</sup> National Law Center on Homelessness & Poverty, *No Safe Place: The Criminalization of Homelessness in U.S. Cities* (2014), p. 8. Available from [https://stateinnovation.org/uploads/asset/asset\\_file/2261/2014\\_No\\_Safe\\_Place\\_The\\_Criminalization\\_of\\_Homelessness\\_in\\_US\\_Cities.pdf](https://stateinnovation.org/uploads/asset/asset_file/2261/2014_No_Safe_Place_The_Criminalization_of_Homelessness_in_US_Cities.pdf).

<sup>25</sup> Joint response to questionnaire from NHLCP, Columbia University and NCCP (see note 2 above), p. 4.

<sup>26</sup> Christopher Silver, “Do the donors have it right? Decentralization and changing local governance in Indonesia”, in *Globalization and Urban Development*, Harry W. Richardson and Chang-Hee Christine Bae, eds. (Berlin, Springer, 2005).

## A. Treaty body monitoring mechanisms

28. In 2009 the Secretary-General encouraged States to provide information on participation at “national, regional and local levels of governance and, where appropriate, at federal and provincial levels”.<sup>27</sup> Some treaty body reporting guidelines request States to provide information on the role and activities of subnational, regional, provincial or municipal assemblies or authorities in promoting and protecting human rights.<sup>28</sup>

29. In that regard, States have developed internal procedures for engaging subnational governments in periodic reporting on housing rights and related issues. In some cases, local governments have made direct written submissions to treaty bodies.<sup>29</sup> National human rights institutions have also played an increasingly important role in periodic reviews, acting as catalysts for improved engagement of subnational governments with review processes. Where subnational representatives have participated directly in periodic reviews, they have been welcomed. Overall, however, subnational governments may experience the treaty review process only indirectly and remotely. While they may be asked by national Governments to provide information for reports, they often receive little direct feedback on positive measures they have adopted and may not hear about concerns and recommendations relevant to their areas of responsibility once the review is completed. As a participant in the expert consultation noted: “The more local the government, the further it is from Geneva”.

30. Though the focus of concluding observations has remained predominantly on the national level Government, treaty bodies have identified recurrent problems regarding the implementation of the right to adequate housing at the subnational level. The Committee on Economic, Social and Cultural Rights, for instance, has identified a number of concerns with respect to local and other subnational governments, such as: discrimination against migrants and minority groups; failure or inability of municipal social housing providers to provide sufficient housing to marginalized groups; municipal expropriation of land that fails to comply with international legal norms on displacement and forced evictions; the need for coordinated national funding to local governments for adequate housing; and the need to include the right to adequate housing in subnational law and to make that right legally enforceable at the subnational level.<sup>30</sup>

31. The Committee on the Elimination of Racial Discrimination has recognized positive measures taken to develop housing strategies at the local level that promote inclusion of racial and ethnic minorities.<sup>31</sup> The Committee has also expressed concern that, despite national level efforts to support subsidized housing at the local level, the autonomy of municipalities has acted “as a major obstacle” to achieving non-discrimination in access to social housing, raising concerns in a number of cases about discrimination against migrants, racial minorities, persons of foreign origin and Roma.<sup>32</sup>

<sup>27</sup> Compilation of guidelines on the form and content of reports to be submitted by States parties to the International Human Rights Treaties (HRI/GEN/2/Rev.6), para. 45 (b).

<sup>28</sup> See, for example, the guidelines on treaty-specific document to be submitted by States parties under article 35, paragraph 1, of the Convention on the Rights of Persons with Disabilities (CRPD/C/2/3).

<sup>29</sup> See, for example, Peace & Justice Commission submission of 29 September 2009, available from [www.ci.berkeley.ca.us/uploadedFiles/Clerk/Level\\_3\\_-\\_City\\_Council/2009/09Sep/2009-09-29\\_Item\\_19\\_United\\_Nations\\_Treaty\\_Reports.pdf](http://www.ci.berkeley.ca.us/uploadedFiles/Clerk/Level_3_-_City_Council/2009/09Sep/2009-09-29_Item_19_United_Nations_Treaty_Reports.pdf) (accessed 14 November 2014) and California Assembly Concurrent Resolution 129, available from <http://legiscan.com/CA/text/ACR129/id/60418>.

<sup>30</sup> See, for example, E/C.12/ALB/CO/2-3; E/C.12/CAN/CO/4 and E/C.12/CAN/CO/5; E/C.12/NOR/CO/5; E/C.12/ESP/CO/5; and E/C.12/TGO/CO/1.

<sup>31</sup> See CERD/C/USA/CO/6, para. 9.

<sup>32</sup> See CERD/C/CZE/CO/7, para. 16, and CERD/C/SVK/CO/6-8, para. 17.

32. Treaty bodies have also dealt with responsibilities of subnational governments in complaints procedures. For example, in *Liliana Assenova Naidenova et al. v. Bulgaria* (CCPR/C/106/D/2073/2011), a Roma community challenged a forced eviction initiated by the Sofia Metropolitan Municipality, Vuzrajdane subdistrict, acting independently of the national Government. The community was unsuccessful in challenging the eviction domestically, with the Sofia City Court determining that the eviction was lawful and the Supreme Administrative Court upholding that decision. The Human Rights Committee requested interim measures to stop the city from proceeding with the eviction and, after considering the communication on the merits, found that the State party would violate the petitioners' rights under article 17 of the Covenant if the eviction proceeded without the provision of adequate alternative accommodation for the community. The national Government used the Committee's decision to exert pressure on the Municipality to refrain from carrying out the eviction. Two years later, the permanent injunction remains in place and the community is in discussion with the municipal authorities on alternative housing.

33. The Committee on the Elimination of Discrimination against Women has also dealt with housing cases that engage subnational level governments. In *Kell v. Canada* (CEDAW/C/51/D/19/2008), an indigenous woman alleged that in the context of domestic violence, she had been dispossessed of her housing as a result of decisions taken by the local housing authorities. The Committee deemed the Northwest Territories Housing Corporation and the local housing authority to be agents of the State party, referring to them as such, and concluded that, as a result of the actions of the local housing authority, the State party had violated articles 2, paragraphs (d) and (e), and article 16, paragraph 1 (h), read in conjunction with article 1 of the Convention, which protect against discrimination by public authorities and the equal rights of spouses with respect to property.<sup>33</sup>

## **B. Universal periodic review**

34. The universal periodic review process has also engaged the responsibilities of subnational governments, particularly municipalities, in the implementation of human rights. Many States engage with subnational level governments in the development of their State report for the review. A number of States' reports for the universal periodic review include information on the role of subnational governments with respect to housing, and some have acknowledged the challenges of multi-jurisdictional responsibilities in relation to housing. The recommendations emanating from the universal periodic review process rarely engage the human rights obligations of municipalities and local governments and seldom engage local or other subnational governments on issues of housing.

## **C. Special procedures**

35. Special procedures regularly engage with subnational levels of government in the context of mandated activities because they have a number of opportunities to do so. During official country missions and working visits, for example, special rapporteurs regularly meet with local and other subnational authorities to assess the implementation of human rights. In the case of the mandate on adequate housing, official visits have systematically included an exchange of views with city councils or other subnational officials. At times, country missions have served as a bridge, with the Special Rapporteur

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<sup>33</sup> See also CEDAW/C/32/D/2/2003 for a link between domestic violence and inadequate housing alternatives.

bringing various levels of government and various stakeholders together. Recommendations made in mission reports have frequently been directed toward local and other subnational level governments within their areas of responsibility.

36. The former Special Rapporteur on extreme poverty and human rights, in her report on the official visit to Mongolia (A/HRC/23/36/Add.2, para. 97 (aa)), recommended that local authorities should be allocated adequate resources to enable them to provide basic services to internal migrants from rural areas to informal settlements in cities. Similarly, the former Special Rapporteur on the human right to safe drinking water and sanitation, in her report on the official mission to Japan (A/HRC/18/33/Add.3, para. 69 (d)), recommended the adoption of a comprehensive law on water and sanitation delineating the responsibilities of the national and municipal levels, including provisions on quality standards, maximum tariff limits and the establishment of regulatory and complaint mechanisms.

37. Thematic reports and communications — two other mandated activities of special rapporteurs — also engage subnational governments with respect to their housing responsibilities. By way of illustration, the former Special Rapporteur on adequate housing, Raquel Rolnik, in her Guiding Principles on Security of Tenure for the Urban Poor, paid considerable attention to the role of local governments in ensuring security of tenure. Guiding principle No. 2, for example, suggests that States, including relevant authorities, should allocate sufficient funds to ministries, municipalities and local governments for the implementation of measures to improve security of tenure (A/HRC/25/54, para. 5).

38. The mandate on adequate housing regularly receives allegations that identify local, municipal and other subnational authorities as pertinent to the claims made by individuals and communities. Those submissions raise concerns of imminent threats, including alleged forced evictions, forced displacement or development-basis eviction without application of existing international standards; restrictions and other discriminatory practices on access to housing by specific populations groups, including refugees, asylum seekers, undocumented migrants, and ethnic, religious or other minorities; and changes in housing subsidies and welfare programmes directly impacting on people living in poverty, the unemployed, persons with disabilities or women. Complaints also refer to the lack of affordable housing, substandard housing, fuel poverty, and denial of or inadequate services, including water, sanitation and electricity.<sup>34</sup>

39. In communications involving local authorities, however, official responses from States rarely indicate whether the information was shared with relevant local or subnational authorities, or describe the concrete steps and measures taken at those levels. For example, in 2014 the Special Rapporteur issued a joint urgent appeal together with the Special Rapporteur on the human right to safe drinking water and sanitation, and the Special Rapporteur on extreme poverty and human rights, to the Government of the United States. The letter focused on the decision by the authorities in the city of Detroit to suspend water services to thousands of households. In its response to the letter, the Government of the United States did not indicate whether it had consulted with the Governor of Michigan or the Mayor of Detroit regarding the allegations.<sup>35</sup>

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<sup>34</sup> See, for example, case No. COL 5/2014 (A/HRC/27/72, p. 74); case No. NGA 1/2013 (A/HRC/24/21, p. 80); case No. PRT 2/2013 (A/HRC/25/74, p. 27); case No. ROU 1/2011 (A/HRC/19/44, p. 63); and case No. GBR 2/2011 (A/HRC/18/51, p. 87). Available from [www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx](http://www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx).

<sup>35</sup> See case No. USA 9/2014 (A/HRC/28/85).

## VI. Accountability under domestic law

40. While enhanced international accountability of local and other subnational governments is important, international mechanisms can only be supplementary to effective domestic procedures and remedies.<sup>36</sup> The Committee on Economic, Social and Cultural Rights has emphasized the importance of ensuring effective domestic remedies for Covenant rights. It has recognized that, while the method by which rights are given effect in national law is a matter for each State party to decide, “the means used should be appropriate in the sense of producing results which are consistent with the full discharge of its obligations by the State party”.<sup>37</sup>

41. Within the flexible framework established by the Committee, local and subnational governments have been made accountable to the right to adequate housing under domestic law in a variety of ways, ranging from constitutional rights through legislative and administrative requirements to rights-based housing strategies.

42. Statutory and administrative remedies often engage important components of the right to adequate housing and they are of particular importance at the local and subnational levels – the levels at which housing programmes are administered and where rights holders usually first seek effective resolutions. It is particularly important that administrative remedies be timely and effective in relation to housing, since the most fundamental interests are often at stake.

43. Many States now include recognition of the right to adequate housing in their constitutions and virtually all constitutions include rights such as non-discrimination or the right to life, which should provide protection of key components of the right to housing. Whereas interaction between international human rights bodies and States has focused on national rather than local level governments, the opposite has generally been the case in the context of domestic courts. Various constitutional housing rights claims have focused on the role of local or subnational governments. The effective application of constitutional rights at the local and subnational levels is thus critical for enhanced accountability of subnational governments to the right to adequate housing.

44. The Special Rapporteur is encouraged by the growing number of cases being brought to courts domestically which address alleged violations of housing rights by local and subnational governments. Those cases have generated new understandings of the critical role that courts and administrative bodies can play in adjudicating claims and enforcing the obligations of local and subnational governments to realize the right to adequate housing. Developments at the domestic level in the adjudication of housing rights claims have informed emerging international human rights norms. In parallel, domestic court cases have made explicit references to international standards, such as those related to the scope and content of the right to adequate housing in general comment No. 4 (1991) on the right to adequate housing and general comment No. 7 (1997) on the right to adequate housing: Forced evictions of the Committee on Economic, Social and Cultural Rights.

45. The jurisprudence of the South African Constitutional Court has been particularly influential. The South African Constitution guarantees the right to access adequate housing and obliges all levels of government to take reasonable legislative and other measures, within available resources, to achieve the progressive realization of that right. The famous *Grootboom* case on the right to adequate housing considered the obligations of Cape

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<sup>36</sup> Committee on Economic, Social and Cultural Rights, general comment No. 9 (1998) on the domestic application of the Covenant, para. 4.

<sup>37</sup> *Ibid.*, para. 5.

Metropolitan government, a municipality that was facing the most severe homelessness/informal settlement crisis in the country.<sup>38</sup> The claimants were living in a sports field under plastic sheets without services. They argued that the neglect of their desperate circumstances by the municipality and other levels of government violated their right to adequate housing.

46. Housing is an area of concurrent national and provincial competence in South Africa, but the Constitution requires the national and provincial governments to assign responsibilities to a municipality “if that matter would most effectively be administered locally and the municipality has the capacity to administer it”.<sup>39</sup> Within that context, the Constitutional Court established that measures taken to realize the right to adequate housing must be “reasonable” — that they must be comprehensive, coherent, flexible and effective; have due regard for those in poverty and deprivation; utilize available resources; be free of bureaucratic inefficiency or onerous regulations and ultimately be capable of realizing the right to adequate housing. The Court also emphasized the fact that responsibilities must be clearly allocated to the different spheres of government with appropriate financial and human resources, and that local governments have an obligation to ensure that services are provided in a sustainable manner.<sup>40</sup> The Court held that the housing programme had failed to adequately prioritize those in the greatest need.

47. That decision has had a significant impact in many municipalities, leading to so-called “Grootbroom allocations”. In subsequent cases in South Africa, the reasonableness standard has been applied to require municipalities to provide adequate alternative accommodation to anyone evicted from either public or private land;<sup>41</sup> to ensure meaningful engagement with affected communities on planning and housing issues;<sup>42</sup> and to ensure that rent increases imposed by private landlords are just and equitable.<sup>43</sup> With respect to available resources, the Court has recognized that local governments cannot escape their obligations to progressively realize the right to adequate housing simply by claiming dependence on funding from other levels of government, and that the division of responsibilities between the different spheres should not be absolute or inflexible where local government is best suited to “engage with and prospectively plan around the needs of local communities”.<sup>44</sup>

48. Important jurisprudence on the right to adequate housing applied to subnational levels of government has also emerged from Argentina. In the Matanza/Riachuelo basin case, a suit was filed seeking compensation for damages, including violations of the right to housing resulting from pollution of the basin.<sup>45</sup> The Supreme Court of Argentina held that the responsibility to ensure the prevention of future damage and to rectify existing environmental damage resided with all three levels of government — the national Government, the provincial government and the City of Buenos Aires. After several

<sup>38</sup> *Government of the Republic of South Africa and Others v. Grootbroom and Others* (CCT11/00) October 2000, para. 58.

<sup>39</sup> Constitution of South Africa, Section 156 (4).

<sup>40</sup> *Government of the Republic of South Africa and Others v. Grootbroom and Others* (CCT11/00) October 2000, para. 39.

<sup>41</sup> *Occupiers of Portion R25 of the Farm Mooiplaats 355 JR v. Golden Thread Ltd. and Others* (CCT 25/11) December 2011.

<sup>42</sup> *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v. City of Johannesburg and Others* (CCT 24/07) February 2008.

<sup>43</sup> *Maphango and Others v. Aengus Lifestyle Properties (Pty) Ltd.* (CCT 47/11) March 2012.

<sup>44</sup> *City of Johannesburg Metropolitan Municipality v. Blue Moonlight Properties 39 (Pty) Ltd and Another* (CCT 37/11), paras. 46, 54 and 57.

<sup>45</sup> *Mendoza Beatriz Silva et al. v. State of Argentina et al.*, Supreme Court of Argentina, 8 July 2008.

hearings with all parties involved, the ruling carefully designated responsibility and a time frame for carrying out the necessary rehabilitation work. The Court established a system of monitoring and created a working group including the National Ombudsman and civil society organizations, remaining seized with the case until the desired outcomes were guaranteed for the thousands of people directly affected.

49. The Constitutional Court of Colombia has also made important advances in that area. In 2004, in a ground-breaking ruling on the economic, social and cultural rights of internally displaced persons, the court ruled that there was an “unconstitutional state of affairs” as a result of the internal conflict.<sup>46</sup> The Court also held the deteriorating housing conditions of internally displaced persons to be *prima facie* contrary to the Constitution. The national Government was ordered to implement a number of measures, including a housing plan that ensured local institutions provided equal benefits for displaced persons.<sup>47</sup> In a follow-up ruling in 2006, the Court ordered relevant municipalities to organize a working group to review the housing policies in each jurisdiction, and to develop plans and programmes with direct participation of displaced persons, and with representatives of the National Human Rights Institution. The Court remained seized of the case, receiving trimestral reports from the different levels of government.<sup>48</sup>

50. In Cairo, the courts have recently enforced the right to adequate housing so as to limit the power of the City Governor to seize land for “public benefit”.<sup>49</sup> A coalition of civil society organizations had some success in relying on the right to housing in article 67 of the 2012 Egyptian Constitution in both political action and litigation. In a recent case, the organizations challenged a decree issued by the Governor of Cairo announcing a seizure of land for development, and succeeded in securing a court order repealing the order of evacuation.<sup>50</sup>

51. In India, the right to adequate housing is not included as a fundamental right in the Constitution, but courts have now recognized the right to housing as enforceable under the right to life. In a 2010 case,<sup>51</sup> initiated after the petitioners had been displaced from their land and their houses demolished, the High Court of Delhi ordered that the Government of Delhi relocate them to a suitable place and provide alternative land with ownership rights.<sup>52</sup>

52. In the United Kingdom of Great Britain and Northern Ireland, there are no constitutional protections through which the right to housing can be claimed. However, statutory provisions requiring local authorities to provide housing for those who are homeless are enforceable in courts. In addition, the European Convention for the Protection of Human Rights and Fundamental Freedoms is enforceable by domestic courts in the United Kingdom. In *R. v. Enfield London Borough Council, ex parte Bernard*, for example, when a woman with a disability was not provided with the accessible housing to which she

<sup>46</sup> Constitutional Court of Colombia, decision T025/04. Available from [www.corteconstitucional.gov.co/relatoria/2004/t-025-04.htm](http://www.corteconstitucional.gov.co/relatoria/2004/t-025-04.htm).

<sup>47</sup> *Ibid.*

<sup>48</sup> Constitutional Court of Colombia, decision T-585/06. Available from [www.corteconstitucional.gov.co/relatoria/2006/t-585-06.htm](http://www.corteconstitucional.gov.co/relatoria/2006/t-585-06.htm).

<sup>49</sup> Law No. 10/1990 on Expropriation of Ownership for the Public Interest.

<sup>50</sup> “Administrative Court blocks attempt to seize Ramlet Bulaq”, *Mada Masr*, 28 August 2013. Available from [www.madamasr.com/news/administrative-court-blocks-attempt-seize-ramlet-bulaq](http://www.madamasr.com/news/administrative-court-blocks-attempt-seize-ramlet-bulaq).

<sup>51</sup> *Sudama Singh and Others v. Government of Delhi and Anr.* Available from [www.hrln.org/hrln/Order%20Mukundi%20lal.pdf](http://www.hrln.org/hrln/Order%20Mukundi%20lal.pdf).

<sup>52</sup> Housing and Land Rights Network, *Reaffirming Justiciability: Judgements on the human right to adequate housing from the High Court of Delhi* (New Delhi, 2013). Available from [www.hic-sarp.org/documents/Reaffirming\\_Justiciability\\_Judgements\\_on\\_HRAH\\_from\\_High\\_Court\\_of\\_Delhi.pdf](http://www.hic-sarp.org/documents/Reaffirming_Justiciability_Judgements_on_HRAH_from_High_Court_of_Delhi.pdf).

was entitled under the Housing Act, she challenged the local authority's actions as a violation of her right to the protection of home and family life under article 8 of the European Convention.<sup>53</sup> The court held that accessible accommodation was important because it would facilitate family life and would secure her "physical and psychological integrity". The court ruled that "it would have restored her dignity as a human being".

53. Despite those significant advances in a number of jurisdictions, domestic courts in other cases have failed to apply constitutional provisions and other domestic law to subnational governments in a manner that is consistent with international human rights norms. Moreover, local and other subnational governments have not consistently implemented remedies where courts have ordered compliance with the right to adequate housing.

54. In some States, constitutional guarantees of the right to adequate housing have provided little protection against forced evictions carried out by local governments. For instance, the Special Rapporteur has drawn the attention of the Government of Sri Lanka to the fact that the city of Colombo Urban Regeneration Project reportedly authorized the removal of thousands of shanty dwellers. Residents were not provided with adequate information regarding their relocation and resettlement sites or adequate and timely compensation for loss of land, housing structures, assets or small businesses. Reportedly, affected residents who have sought remedies through the courts, based on the constitutional right to adequate housing, have not had consistent success. Where the courts have ordered remedies, they have not always been implemented.<sup>54</sup>

55. In the Philippines, courts have not always interpreted the constitutional right to adequate housing consistently with international human rights norms. For example, courts ruled in one case that there was no constitutional obligation to provide resettlement opportunities for displaced communities.<sup>55</sup> In another case, the court found that anyone designated a "professional squatter" may be deprived of any due process rights with respect to evictions.<sup>56</sup>

56. The Special Rapporteur is concerned that victims of violations of rights to adequate housing by local and other subnational governments are often denied access to justice or effective remedies, even where constitutional provisions exist.

## VII. Emerging initiatives for human rights accountability of subnational level governments in relation to housing

57. Just as the implementation of housing rights is increasingly in the hands of local government, it is at the local level that new approaches and initiatives for government accountability to the right to adequate housing are emerging. Local governments are

<sup>53</sup> *R. v. Enfield London Borough Council, ex parte Bernard*, Queen's Bench Division Administrative Court (Sullivan J), 25 October 2002.

<sup>54</sup> See case No. LKA 11/2104 (A/HRC/28/85).

<sup>55</sup> *Galay v. Court of Appeal* G.R. No. 120132, 4 December 1995. Available from [www.lawphil.net/judjuris/juri1995/dec1995/gr\\_120132\\_1995.html](http://www.lawphil.net/judjuris/juri1995/dec1995/gr_120132_1995.html).

<sup>56</sup> *Republic of the Philippines v. Mijares*, G.R. Nos. 170615-16, 9 July 2009. Available from <http://sc.judiciary.gov.ph/jurisprudence/2009/july2009/170615-16.htm>.



organizing themselves independently of national Governments and working with civil society and other actors to articulate models of direct human rights accountability.<sup>57</sup>

58. There are significant advantages to subnational governments developing such independent approaches. They are best placed to respond to the distinctive challenges of implementing the right to housing at the local level and to enable residents' empowerment and participation in local government. That offers an important foundation for community-based, human rights approaches to local governance and programme administration.

## A. Cities and human rights

59. Over the last 15 years, the “human rights city” has emerged as an important initiative involving mayors, city officials, civic and human rights non-governmental organizations and experts and community-based organizations in cities across the world.<sup>58</sup> The Gwangju Declaration on Human Rights City, adopted in 2011, defined a human rights city as “both a local community and a socio-political process in a local context where human rights play a key role as fundamental values and guiding principles”.<sup>59</sup> Accordingly, local government, parliament, civil society, private sector organizations and other stakeholders work together to improve the quality of life for all inhabitants in a spirit of partnership based on human rights standards and norms. The Declaration emphasizes that a legal basis — city ordinances and legal instruments such as human rights charters and legal organizations — should be established. Human rights cities also acknowledge that implementation is more important than policymaking and that effective accountability mechanisms need to be developed to make city government accountable to its commitments.

60. Seoul, in the Republic of Korea, has named itself a human rights city, having adopted an ordinance in 2012 to protect and promote human rights for its citizens. The ordinance establishes a Human Rights Division within the city government, human rights policies, a Committee on Human Rights and a Human Rights Ombudsperson to ensure access to remedies for rights violations. The Ombudsman has become a model for other local governments in the country. With respect to housing, Seoul has adopted measures and guidelines, particularly on forced evictions, to protect its residents. The guidelines are based on general comment No. 7 on forced evictions of the Committee on Economic, Social and Cultural Rights, and prohibit evictions in winter or at night and require civil servants to be present to monitor any human rights violations when executing an eviction and to provide adequate remedies to those who are evicted, among others.

61. In keeping with human rights city initiatives, a number of cities and some provinces and states have incorporated the right to adequate housing specifically into local governance. Those developments should be seen as positive evidence of a “from local to global” approach to human rights implementation.

<sup>57</sup> See, for example, the progress report of the Advisory Committee on the role of local government in the promotion and protection of human rights, including human rights mainstreaming in local administration and public services (A/HRC/27/59), paras. 38–51 and 56–59.

<sup>58</sup> There are a number of human rights city charters: the European Charter for the Safeguarding of Human Rights in the City (2000), which has been signed by more than 350 European towns and cities, the Montreal Charter of Rights and Responsibilities (2006), the Mexico City Charter for the Right to the City (2010), the Gwangju Human Rights Charter (2012), the Vienna Charter (2012) and the Global Charter-Agenda of Human Rights in the City (2011).

<sup>59</sup> 2011 World Human Rights Cities Forum, “Globalizing Human Rights from Below: Challenge of Human Rights Cities in the 21st Century”. Available from [www.uclg-cisdp.org/sites/default/files/Gwangju\\_Declaration\\_on\\_HR\\_City\\_final\\_edited\\_version\\_110524.pdf](http://www.uclg-cisdp.org/sites/default/files/Gwangju_Declaration_on_HR_City_final_edited_version_110524.pdf).

62. In November 2012, the Province of Buenos Aires adopted a law on fair access to habitat (*Ley de acceso justo al habitat*) which guarantees the right to housing and to a dignified and sustainable habitat, along the lines of the provincial and national constitutions and several international human rights treaties. The law establishes a link between the public policy on housing and the way in which different public and private stakeholders are involved, including real estate companies. It requires steps to be taken to address the lack of adequate housing for people living in poverty or with special needs, and creates mechanisms to regulate speculation around land prices. It articulates both the right to adequate housing and the “right to the city” as core principles alongside the social function of land and property, democratic decision-making in the city and the importance of equitable distribution of benefits and costs of city growth, including in relation to infrastructure.

63. Madison County in Wisconsin, United States of America, adopted a city resolution in 2011 recognizing housing as a human right. The resolution requires Madison to promote fair housing and refers to the International Covenant on Civil and Political Rights and to the Convention on the Elimination of Racial Discrimination, to which the United States is party. The city is therefore required to eliminate policies with a racially discriminatory impact. The resolution calls for an assessment of affordable and accessible housing needs and an adequately funded, responsive housing strategy. Those types of initiatives are particularly important in a country that has not ratified the International Covenant on Economic, Social and Cultural Rights, and raise the possibility of subnational governments affirming direct accountability to international human rights norms even where the State has not ratified them.

64. Human rights city initiatives are complementary to, but distinguishable from, the “right to the city” as laid down in the 2005 World Charter on the Right to the City. Rather than being based on existing international human rights law, that movement was born of the idea that the freedom to make and remake our cities and ourselves is one of the most precious yet most neglected of our human rights. The Right to the City project is therefore more extensive than human rights city initiatives and includes values such as the social production of housing/habitat and the rights to “sustainable and equitable urban development”, the right to transport and public mobility, and the right to the environment. At the same time, the World Charter on the Right to the City includes an explicit provision on the right to adequate housing which is generally in keeping with the right as articulated in international human rights law.<sup>60</sup>

65. Brazil was a pioneer in establishing a City Statute, Law 10.257 of 10 July 2001, creating the basis to tackle urban inequalities, and introducing the concept of the social function of the city and property. According to the Statute, the municipalities have broad capacities to set the basis for an urban order that addresses social exclusion and spatial segregation, focusing on housing but also on a wider range of social and environmental issues faced by cities. While its implementation has not always appeared to live up to the expectations originally created, the Statute has shown the importance of shifting the paradigm around urban reform towards a people-centred perspective, with local governments having a central role, and combining social mobilization, legal reform and institutional change.

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<sup>60</sup> See [www.urbanreinventors.net/3/wsf.pdf](http://www.urbanreinventors.net/3/wsf.pdf).

## B. Access to justice at the local and subnational levels

66. The Advisory Committee to the Human Rights Council has suggested that the protection of human rights requires independent mechanisms as a vital means of safeguarding human rights and making the protective role of local authorities more visible.<sup>61</sup> Examples of such local mechanisms include local or national ombuds offices; city level human rights commissions, such as in Bosnia and Herzegovina; national and state/provincial level human rights commissions with jurisdiction over subnational level governments; and elected people's councils at the municipal level to address human rights complaints.<sup>62</sup>

67. The establishment of local human rights mechanisms provides a vehicle through which the right to adequate housing might be protected. For example, in Portugal, the Ombudsman has received an increasing number of housing related complaints and has directly encouraged a municipality to refrain from undertaking evictions and demolitions and to monitor the situation.<sup>63</sup>

68. Other emerging mechanisms, such as performance contracts which stipulate socioeconomic indicators and targets that municipal officials must meet,<sup>64</sup> can similarly be used as an accountability mechanism at the local level for the right to adequate housing.

69. In the context of housing, the Committee on Economic, Social and Cultural Rights has established that national level housing strategies based on human rights are a critical component of ensuring the enjoyment of the right to adequate housing. The Special Rapporteur notes that subnational and local strategies based on human rights with measureable goals, timelines and complaints procedures, properly coordinated with national strategies, are equally critical to the realization of the right to adequate housing.

## VIII. Conclusions and recommendations

**70. Effective implementation of the right to adequate housing cannot be achieved without the proactive involvement of local and subnational governments. Just as there are key responsibilities assigned or delegated to local and subnational governments within their domestic spheres of competence, there are also obligations to which they are bound in international human rights law as related to the right to adequate housing.**

**71. Although the drive for decentralization can resonate with many core values linked to the right to adequate housing, including local empowerment, meaningful engagement, and enhanced accountability and transparency, decentralization is not always favourable to the implementation of the right to adequate housing. Proximity to stakeholders is only a positive feature if local and other subnational levels of government have the necessary resources and the administrative capacity to perform the functions accorded them; if they are cognizant of human rights, accountable and responsive to stakeholders; if meaningful participatory mechanisms are in place; if**

<sup>61</sup> See the progress report of the Advisory Committee on the role of local government in the promotion and protection of human rights, including human rights mainstreaming in local administration and public services (A/HRC/27/59), para. 48.

<sup>62</sup> Response to questionnaire from Egypt (see note 2 above).

<sup>63</sup> Response to questionnaire from the Ombudsman of Portugal (see note 2 above).

<sup>64</sup> Response to questionnaire from the Rwanda Human Rights Commission (see note 2 above).

local elites do not undermine democratic accountability; and if corruption is addressed.

72. A human rights approach to local governance and subsidiarity does not require that all authority rest with local governments. Rather, it requires a recognition that 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. Local governments are in a position to bring forward the experiences of marginalized groups and others whose rights have not been ensured and to find solutions. They serve as the main contact point with community-based initiatives for housing production and upgrades, linking them with broader regional, national or international financing, development and human rights initiatives.

73. The responsibilities of different levels of government are not self-standing. They rarely fall into watertight categories and usually involve collaboration among different levels of government, in addition to other public or private actors. Responsibilities are governed by agreements or joint initiatives among different levels of governments as well as by relationships with community-based organizations and civil society. Where national or regional governments provide funding for housing and related programmes, the realization of the right to adequate housing does not rely solely on one or the other level of government, but on their relationship.

74. Innovative initiatives offer new opportunities to connect international human rights norms with local housing struggles and vice versa, and are resulting in the development of new and constructive relationships between local levels of governments, community groups and rights holders.

75. It remains imperative to promote and continue to develop international norms that are appropriate to subnational levels of government. The reasonableness standard and the innovative approaches to structural remedies that have emerged from domestic courts offer other jurisdictions a useful framework for engaging the obligations of local and other subnational governments to progressively realize the right to adequate housing without discrimination.

76. In line with the above-mentioned conclusions, the Special Rapporteur wishes to offer the following recommendations:

(a) States should encourage local and subnational level governments to actively participate in all relevant international human rights mechanisms, including treaty body review and complaint procedures, the universal periodic review and special procedures.

(b) When addressing issues related to the right to adequate housing, international human rights mechanisms should give further attention to how different levels of government are bound by international human rights law and reference concerns and recommendations accordingly.

(c) Recommendations emanating from international human rights mechanisms should be communicated to local and subnational governments with requests for responses and follow-up action and disseminated to local communities in accessible form.

(d) The responsibilities of all levels of governments should be clearly delineated and jointly coordinated with ongoing independent review and oversight in order to ensure that jurisdictional overlap does not deny those in need access to necessary services or housing. Assistance should be provided to those in need in order to ensure coordinated government responses.

(e) 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.

(f) International financial institutions and United Nations agencies and entities should ensure that the right to adequate housing is incorporated into decentralization processes and housing related initiatives and activities. UN-Habitat and other relevant international agencies should emphasize the right to adequate housing in their promotion of the roles of local and other subnational governments, including in ongoing endeavours related to the post-2015 development agenda and the upcoming discussions on Habitat III.

(g) States must ensure that local and subnational governments have adequate financial and other resources for the discharge of their responsibilities, with capacity to respond to changing housing needs at the local level, particularly of marginalized and disadvantaged groups.

(h) States should ensure that the right to adequate housing and related rights are protected in law and applicable to the local and subnational governments. 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.

(i) States should provide training for all local and subnational authorities about their obligations to ensure the right to adequate housing, non-discrimination and related human rights in all decisions, policies, plans and programmes. Judicial review of administrative decisions and policies should require consistency with the right to adequate housing and other human rights.

(j) States should be encouraged to establish local and subnational human rights institutions to complement national human rights institutions. Human rights institutions should ensure effective monitoring and protection of the right to adequate housing and access to effective remedies in case of violations at the local and subnational levels.

(k) Local and other subnational levels of government should apply and articulate the principle of subsidiarity in an inclusive manner, consistent with the right to adequate housing and non-discrimination, so as to be fully responsive to the rights of marginalized and disadvantaged groups in local communities and to advocate for their interests nationally and internationally.

(l) Local and other subnational levels of government should endeavour to learn about and participate in international human rights mechanisms and to engage with community-based organizations, local civil society and human rights institutions for that purpose.

(m) Cities and municipalities should consider the adoption of charters with explicit guarantees of the right to adequate housing in order to clarify, reinforce or strengthen existing domestic and international human rights obligations. Municipal charters of rights may incorporate communication and monitoring mechanisms through which local challenges can be identified and addressed within a human rights framework.

(n) Civil society and community-based organizations should develop local initiatives to monitor the implementation of the right to adequate housing and develop locally-based human rights standards which are complementary to and compatible with international standards.

(o) Local housing and human rights groups could endeavour to develop innovative approaches to bringing international human rights norms to the local level, including through local hearings or panels. They should engage with the special procedures to raise issues and concerns in relation to the right to adequate housing and non-discrimination in the subnational and local contexts, including via communications and country missions.

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