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Can housing rights be applied to modern housing systems?

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Can housing rights be applied to modern housing systems?

Housing rights

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103

Abstract

Purpose – The purpose of this paper is to outline and examine the growing corpus of housing rights and assess their relevance and applicability to complex contemporary housing systems across the world.

Design/methodology/approach – The paper sets out the principal instruments and commentaries on housing rights developed by the United Nations, regional and other bodies. It assesses their relevance in the context of contemporary analysis of housing systems, organized and directed by networks of legal and other professionals within particular domains.

Findings – Housing rights instruments are accepted by all States across the world at the level of international law, national constitutions and laws. The findings suggest that there are significant gaps in the international law conception and framework of housing rights, and indeed, human rights generally, which create major obstacles for the effective implementation of these rights. There is a preoccupation with one element of housing systems, that of subsidized or social housing. However, effective housing rights implementation requires application at meso-, micro- and macro-levels of modern, dynamic housing systems as a whole. Epistemic communities of professionals develop and shape housing law and policy within these domains. The housing rights paradigm must be further fashioned for effective translation into contemporary housing systems.

Research limitations/implications – The development of housing rights precedents, both within international and national law, is leading to a wide and diffuse corpus of legislation and case law. More research is needed on specific examples of effective coupling between housing rights and elements of housing systems.

Originality/value – This paper offers housing policy makers and lawyers an avenue into the extensive jurisprudence and writings on housing rights, which will inevitably become part of the lexicon of housing law across the world. It also highlights the limitations of housing rights implementation, but offers some new perspectives on more effective application of these rights.

Keywords Housing legislation, Human rights (law), International law

Paper type General review

1. Introduction

Across the world, neoliberal and social democratic governments accept the market as the primary producer and allocator of housing. Government intervention regulates the excesses and externalities of that market, supplanting it in cases of market failure or underdevelopment, subject to available resources. A complex array of legal, formal and informal sanctions and incentives direct the housing system, and its subsystems, towards achieving socially desired outcomes, with varying degrees of success. At a political level, greater intervention and direct State supply of housing challenge the classical free market approach, where the State merely guarantees property and contract law rights. The only disagreement between these two dominant political perspectives is on what constitutes market failure, and just what governments should do about it (Marcuse and Keating, 2006). These market-based approaches can be contrasted with a right-to-housing position in which the “government’s first obligation



is to see that all are decently housed, and the for-profit market is managed and regulated in a way subservient to that goal” (Marcuse and Keating, 2006, p. 139). The United Nations (UN) Special Rapporteur on adequate housing, Raquel Rolnik has recently derided the market approach to housing in the context of the global financial crisis created largely by unregulated housing markets:

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 (Rolnik, 2009).

Housing rights, enshrined in UN, regional and national instruments, constitutions, laws and precedents are creating an increasing level of new standards and obligations on all States and other non-State actors (UN-Habitat UNHRP, 2002a, b, 2005, 2006; Kenna, 2005). However, housing market systems are not monolithic entities, but contain many structural, historical and dynamic interactions between law-makers, regulators and regulations, the construction industry, financial institutions, developers, architects, engineers, planners and other professionals, consumers and others. Effective application of housing rights requires an understanding of the forces and structures shaping housing systems within the built environment.

This paper seeks to present an introductory general analysis of housing rights as derived from international public law, together with a critique of their limitations. It outlines a widely accepted model of housing markets systems, and posits that housing rights require further development in order to effectively impact on housing system across the world.

2. What do we mean by housing rights?

Housing rights are forging a new discourse and jurisprudence across the world (COHRE, 2000). At an international level, public international human rights instruments have led to a legal discourse based on human dignity and other universal values, where States mutually agree to offer certain guarantees of minimum standards, in areas of public and private life, individual freedom and socioeconomic rights, such as housing (Craven, 1995; Eide *et al.*, 2001). The preamble of the Universal Declaration of Human Rights (UDHR, 1948), adopted by all countries, states:

[W]hereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Article 1 states that:

[A]ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood (UDHR, 1948).

Housing rights within international human rights law have developed from the UN system, largely since 1945, establishing a general hegemony of human rights principles throughout the world. The rights are based on the inherent dignity possessed by every human being, and provide a moral compass for the development of housing law and policy across the globe. Yet, this moral universality of human rights must be realized through the particularities of action at national level, in order to be effective (Donnelly, 2003).

Housing rights are now viewed as an integral part of economic, social and cultural rights within the UN, European, Inter-American and African human rights instruments. These include the UDHR (1948) Article 25(1), the International Covenant on Economic, Social and Cultural Rights (1966) Article 11, Convention on the Rights of the Child (1989) Articles 16.1 and 27.3, Convention on the Elimination of All Forms of Discrimination against Women (1979) Article 14.2. and the Convention on the Rights of Persons with Disabilities (2008)[1], as well as many International Labour Organization Conventions and Recommendations (COHRE, 2000; Kenna, 2005).

The UN monitoring agency for housing rights, the Committee on Economic, Social and Cultural Rights (UNCESCR), issued guidance on the content of UN-based housing rights in 1991. General Comment 4 sets out the essential elements of housing rights as comprising legal security of tenure, availability of services, materials and infrastructure, affordability, habitability, accessibility, suitable location and cultural adequacy (UNCESCR, 1991a).

The UN monitoring agency for housing rights, the UNCESCR, issued guidance on the content of UN-based housing rights in 1991. General Comment 4 sets out the essential elements of housing rights as comprising legal security of tenure, availability of services, materials and infrastructure, affordability, habitability, accessibility, suitable location and cultural adequacy.

Ratification involves an undertaking to ensure appropriate policies and laws which underpin the minimum core obligations without discrimination, achieving progressive realization of rights, as well as a requirement to recognize, respect, protect, promote and fulfill the required obligations (UNCESCR, 1991b).

International housing instruments translate to obligations of immediate result – a requirement to undertake immediate action in relation to ensuring a minimum core obligation in terms of the rights concerned, without discrimination (Chapman and Russell, 2002). This minimum core obligation is a minimum threshold approach, below which no person should have to endure. This minimum core obligation corresponds to a level of distributive justice assessing the evenness of the distribution of socially guaranteed minimal levels of certain goods and benefits among individual groups within a country (Skogly, 1990). In terms of housing rights, the minimum core obligations involve a guarantee that everyone enjoys a right to adequate shelter and a minimum level of housing services, without discrimination. Indeed, this concept has been applied to provide determinancy and justifiability to housing and other socioeconomic rights, providing minimum legal obligations, which are easily understood by courts and regulatory bodies (Young, 2008). While the minimum standard or the minimum core obligation approach is well established and recognized by housing professionals in such areas as fitness for habitations standards, fire safety standards, building regulations and planning control, the second element of the rights approach – the concept of progressive realization, is more problematic.

Progressive realization involves a duty on States to:

[...] take steps [...] to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures (UNGA, 1966).

[1] Articles 2, 5.3., 9.1., 19, 22.1. and 28.

Progressive realization of rights involves a cumulative increase in housing rights over time through policies, public spending, legislation, regulation and other means, with no regression of these rights. This compares with increasing normative standards, widely interpreted within housing systems as arising from increased standards and cumulative development, but which can also be incorporated into political and consumerist norms (Giddens, 1990; Deutch, 1995).

Indeed, contemporary writers (Bourdieu, 1984; Hudson, 2004) have shifted the notion of housing demand from meeting the basic needs outlined by Maslow (1943), to more complex motivational forces, driving housing needs or demands in contemporary societies, based on “taste” and lifestyle choices. “Taste” is determined by habitus, the interconnection between levels of economic and cultural capital, and the social conditioning associated with particular combinations of these (Bourdieu, 1984).

In Europe, the Council of Europe has developed a range of normative housing rights standards. These relate to social and medical assistance for those without adequate resources, establish housing obligations in relation to physically and mentally disabled persons, migrant workers, children and young persons, and rights to social, legal and economic protection for families, those who are poor and socially excluded, homeless people, and those unable to afford accommodation. It also includes a State obligation to provide family housing[2]. In 2009, the Council of Europe Commissioner for Human Rights further clarified the actual extent of State obligations arising from its housing rights instruments (Hammarberg, 2009).

The European Court of Human Rights is developing housing rights in an indirect and oblique way through its Articles on the prevention of inhuman and degrading treatment, protection for home, family life and correspondence, fair procedures and non-discrimination[3]. The fundamental rights contained in the Treaties[4] and Directives of the European Union are now addressing housing rights and discrimination on grounds of migrant workers status[5], race or ethnicity[6] or gender[7].

The Organization of American States, Charter of the Organization of American States (1948) and the American Declaration on the Rights and Duties of Man (1948) both recognized housing rights[8]. The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa of the African Union reaffirmed housing rights. The UN Millennium Development Goals include the aim of achieving

[2] Articles 13, 15, 16, 17, 19, 23, 30 and 31.

[3] See *Botta v. Italy* (1998) 26 EHRR 241; *Marzari v. Italy* (1999) 28 EHRR CD 175; *Lopez-Ostra v. Spain*, (1991) 14 EHRR 319; *Geurra v. Italy* (1998) EHRR 357; *Fadeyeva v. Russia* (2007) 45 EHRR 10; *Moreno-Gomez v. Spain* (2005) 41 EHRR 40.

[4] *Treaty Establishing a Constitution for Europe*, October 29, 2004, O.J. (C310) 41.

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

[6] See Council Directive 2000/43, 2000 O.J. (L180) 22.

[7] See Council Directive 2004/113, 2004 O.J. (L373) 37, 38 (EC).

[8] Article 31; See also The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988).

significant improvement in the lives of at least 100 million slum dwellers by the 2020 (Target 11, UN Millennium Development Goal No. 7).

At national level, housing rights are widely enshrined in constitutions, legislation and established case law. Approximately, 40 percent of the world's constitutions refer to housing or housing rights including:

Belgium (1994) Article 23(3): Everyone has the right to enjoy a life in conformity with human dignity. Towards this end, the law, the decree or rules established under article 134 guarantee, taking into account the corresponding obligations, economic, social and cultural rights of which they determine the conditions for their implementation. These rights include, in particular, the right to adequate housing.

Russian Federation (1993) Article 40(1): Each person has the right to housing. No one may be arbitrarily deprived of housing.

South Africa (1997) Section 26(1): Everyone has the right to have access to adequate housing. Section 26(2): The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right.

Section 26(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. Section 28(1): Every child has the right - [...] (c) to basic nutrition, shelter, basic health care services and social services.

Many countries have introduced legislation granting specifically enforceable housing rights. For example, the Housing (Scotland) Act 1987 (as amended) provides a right to accommodation for homeless persons, including a right to temporary accommodation for all homeless persons, and a right to long-term accommodation for broadly defined categories encompassing the majority of homeless applicants. This right is enforceable in the civil courts which may order in appropriate cases, that accommodation be provided to homeless persons. In France, an enforceable right to housing has also been established through the *Droit au logement opposable* Act 2007, which provides for a two-tier remedial mechanism with regional mediation committees, and the possibility to take a case before administrative courts. The use of planning law to achieve integration of social/affordable and private housing, control of land use and quality of infrastructure and amenities is now becoming widely recognized as a somewhat lateral, but practical, means of realizing housing rights (Ponce-Sole, 2006).

Courts across the world have developed housing rights in areas such as security of tenure, respect for home, non-discrimination, decent physical standards and fair procedures in evictions (Bryson, 2006). A legacy of judicial activism has led to a corpus of jurisprudence in many countries, which has established housing rights, even within common law principles (Harris, 2004).

All this suggests that there now exists a growing matrix of housing rights across the world, drawing on a variety of precedents, legislation, constitutions, ratifications of international instruments and measures from other law applying indirectly to housing rights. The internationally accepted UN minimum core obligations and progressive realization obligations on ratifying States, as well as the obligations to recognize, to respect, to protect and to fulfil these obligations are influencing new law making (Alston and Quinn, 1987).

3. Housing systems

3.1 *Elements of housing systems*

Housing systems today are predominantly organized around markets, with varying levels of direct State provision or subsidy in socially or politically important areas. These contemporary housing markets encompass at least five essential elements, subsystems or regimes relating to property rights and registration, housing finance, residential infrastructure, regulation and housing subsidies or public housing (Angel, 2000).

The establishment of individual and enforceable property rights in land and housing are seen as the cornerstone of this enabling housing market regime. The development of land registration systems has been globally promoted for housing markets, mortgage lending and development generally (De Soto, 2000, World Bank, 1993, 1996, 1997). Housing is by far the most widely distributed form of private wealth, and investment in housing requires laws facilitating certainty, exclusivity, transferability and constitutional protection. As stated by Angel (2000, p. 95):

A functional and effective property rights regime must evolve a set of transparent, predictable, non-discriminatory and stable rules that preserve the rights of individuals to use, invest, maintain, rent, mortgage and sell their land and housing properties without hindrance and with the full protection against arbitrary action by the authorities.

Complex legal ownership arrangements involving family law systems, with rules on ownership and division of property upon marriage, separation, divorce, death and co-habitation are required. Innovative legal mechanisms have also been developed to deal with unregistered land, new forms of title, apartment management and ownership, transfer and conveyancing procedures, disputes and the regulation of actors involved in housing markets.

The housing finance regime requires the creation and maintenance of an effective, enforceable lending and regulatory regime for housing finance, as well as the development of housing finance institutions and sustainable mortgage markets.

Technological developments in housing finance have been dramatic. Electronic and Internet systems have revolutionized the concentration and outsourcing of mortgage brokering and servicing, creating new and more sophisticated services and products, credit scoring and automated underwriting, as well as standardization of documentation and legal structures (BIS, 2006). Yet, while most of the world's population now lives in countries with a market-based mortgage finance system with generally affordable terms, and market-based housing finance is now available to most middle-income people in the world, it is still not available in most countries, or for the poorest people (Buckley and Kalarickal, 2006).

The third requirement for the enabling market approach is an effective residential infrastructure regime. This requires legislation and regulation in relation to zoning, planning, public health, control of nuisance and sanitation measures, and planning controls on urban land development and supply. Detailed legislation and case law have developed in relation to roads and walkways, water, sewage, drainage, transport, public facilities and other services, which contribute to housing quality (Angel, 2000).

The fourth and most important element for industrialized countries is the regulatory regime for quality in housing systems. Building control measures exercised by the State are critical elements in the development of housing markets. Indeed, these housing markets actually require a legal and regulatory quality framework that only governments can provide (World Bank, 1991).

Housing subsidies are a central element of modern housing market State enablement policies (Angel, 2000; Buckley and Kalarickal, 2006). Of course, the presence or absence of housing subsidies (and tax incentives) cannot be understood outside the broader framework of overall fiscal policy. The largesse of the State in enhancing land values through planning and zoning decisions, and the contemporary “capitalization” or subsidies to banks globally, represent enormous subsidies to the housing market system. Direct social housing provision by the State may be necessary to provide a buttress to the market, and in recent times has become a State vehicle for resolving overproduction of housing markets. Thus, social housing can be seen as both an integral part of a market support system and a significant element of political largesse. However, contemporary market-based approaches to housing subsidies and social housing involve a retreat from public housing production, towards privatization of such stock and abolition of subsidies (Cammack, 2002). A contemporary development in this area is the promotion of “unitary” rental systems, involving “Third-Sector” rented housing with State guarantees in relation to the private finance invested and lesser levels of subsidies (Dübel *et al.*, 2006).

3.2 Macro-, meso- and micro-levels of housing systems

Housing systems, like all systems, operate at three levels – the macro (broadly the national, regional and international context within which housing systems interact with other systems, the meso (including the housing systems, its subsystems and institutional contexts) and the micro (the level of individual aspirations, interactions and micro-political struggles) (Dopfer *et al.*, 2004).

Understanding housing systems at a macro-level requires a focus on national and international economic, social and political measures, with the role of the contemporary State confined to that of governance. Simple hierarchical concepts of command and control, involving the establishment and implementation of laws and policies have given way to the involvement of a broader range of “actors” in the implementation process (Hill and Hupe, 2009; World Bank, 1994). The World Bank describes the idea of governance as the:

[...] process by which authority is exercised in the management of a country’s economic and social resources for development, and the capacity of governments to design, formulate and implement policies and discharge functions (1994, p. xiv).

Governance “describes the hybridity of legal interferences within a society” (Mollers, 2006, p. 316). It accepts a fusion of public and private institutions, and brings an approach to public institutions primarily oriented towards efficiency and output in achieving goals.

At a meso- or institutional level, regulatory norms that establish minimum standards and equality of access to housing are widespread, although more often based on historical public health legislation than international human rights (Sunstein, 1990). There are detailed legal regulations and regulatory systems on land use, housing occupancy and maintenance, building standards, housing costs, eviction procedures, facilities and equipment, and almost all have legally enforceable sanctions for violations, and compensation for breaches. This institutionalized regulation machinery seeks to protect, preserve and promote the physical and mental health and social well-being of people, control nuisances, prevent and control communicable diseases and regulate

privately and publicly owned dwellings in order to maintain adequate sanitation and public health (Angel, 2000, p. 155). Indeed, in some circumstances, it can go so far as delimit and deny property rights, such as granting extended rights of occupancy for tenants, which override the legal owners' power to sell. There are regulatory measures and mechanisms across the contemporary world which act to achieve socially desirable outcomes, and in many cases override civil and property rights (McCrudden, 2007).

At micro- or individual level, the concept of home as a focus for housing consumption and as an asset, where individuals and families develop their own housing "pathways", based on a mix of contemporary opportunities and previous decisions, is becoming the policy norm (Clapham, 2005). However, a deeper treatment of "home" highlights the interplay between the physical environment and the human dimension of living and having relationships with other people (Fox, 2002, 2007).

Home as a physical structure offers material shelter; home as territory offers security and control, a *locus* in space, permanence, security and privacy; home as a centre for self-identity offers a reflection of one's ideas and values and acts as an indicator of personal status; and home as a social and cultural unit acts as the *locus* for relationships with family and friends, and as a centre of activities (Fox, 2002, p. 590).

Thus, understanding housing systems, requires among other things, an examination of the disparate elements at macro-, meso- and micro-levels, as well as the dynamics between these.

4. Applying housing rights

4.1 *Limitations on human rights generally*

Effective implementation of housing rights through the public international law "transmission belt" approach raises issues of dualism/monism in national legal systems, the specificity, clarity and contextual definition of rights terminology, as well as the relationship between human rights law and the systems it seeks to address (Teubner, 1993; Luhmann, 2004). Some claim that international law does not even require any significant changes in State behaviour (Goldsmith and Posner, 2005), or that human rights cannot be incorporated into liberal economic systems at all (O'Connell, 2007). McCrudden (2008) highlights the comparative variations in the notion of human dignity, which lies at the heart of human rights principles. While at UN level there has been extensive analysis of transposing legally defined standards for housing rights on to national housing systems and standards through indicators and benchmarks (United Nations (UN), 2000), yet many UN monitoring processes can amount to reports, merely illustrating creative compliance by recalcitrant States (Bayefsky, 2001).

Housing rights, like other socioeconomic rights derived from international law, are not easily applicable to everyday housing system rules and frameworks. A detailed understanding of the implementation of law and policy is critical (Hill and Hupe, 2009). Jheelan (2007) has highlighted the imprecision and vagueness, aspirational nature and ultimately reliance on a "reasonableness" curial test, which acts a delimitation on the effectiveness of universal minimum core obligations. Indeed, some eminent contemporary writers are positing that minimum core obligations may be fulfilled through general government programmes, and not necessarily by curial enforcement of individual entitlements (Sachs, 2009, p. 182). At the level of progressive realization of rights, Robertson (1994) has pointed out that words such as "maximum" in relation to the level of resources to be devoted to realizing rights, form the sword of human rights

rhetoric, while words like “available” facilitate “wriggle room” for the State. Hunt (1998) has highlighted the variable and elusive nature of such terms as “progressive realization”, and “maximum of their available resources”. These imply that some State obligations could vary over time: “[T]hese variable elements of States parties” obligations under ICESCR contribute to the sense of uncertainty which remain a feature of international economic, social and cultural rights” (UNHCHR, 1998).

Other limitations on the legal liberalist “transmission belt” approach are highlighted in legal realism, critical legal studies and feminist analyses, as well as the myopic treatment of formal over substantive equality (Kennedy, 2002). Indeed, legal liberal models of individually enforceable rights may act to displace, restructure or reprioritize innovative or radical programmatic approaches to State provision. Many acclaimed housing rights cases involve only the prioritization of access to new homes, or more responsive “decanting” procedures, ultimately leading to little or no increase or improvement in housing *per se*[9]. Housing rights cases, corralled within the legal liberalist discourse, often only differentiate socioeconomic rights from civil and political rights, or reduce legal arguments to juxtaposing the role of politicians and courts in allocating resources in society. Although valuable guidelines have been developed to deal with violations of internationally defined socioeconomic rights (Limburg Principles, 1986; Centre of Human Rights, 1997), there is no effective enforcement of penalties for housing rights violations at international level, despite some very valuable principles and guidelines in this area. Ironically, despite the development of the *Human Rights Based Approach* (Kirkmann Boesen and Martin, 2007) and *National Action Plans* (UN OHCHR, 2002), the language of human rights can easily be appropriated within new public managements discourses. Indeed, human rights language is now regularly used within systems of consultation, participation and strategies for service delivery, often acting to legitimize and buttress existing public policies and processes (Kenna, 2008).

4.2 Effective application of housing rights

Effective implementation of housing rights requires a deconstruction of housing systems, which will vary widely between States, both in terms of market role, development and complexity, as well as the extent of legally defined institutional, regulatory and consumer norms. At a macro-level, the model of supra national governance, evaluating the outcomes of institutions, laws and other measures of States in terms of results can be appropriated to the monitoring and development of housing rights. Of course, the UN monitoring systems, especially the UNCESCR, examines and evaluates the broader outcomes of rights implementation, alongside legislative provisions, in its regular monitoring of States[10]. The European Committee of Social Rights case of *FEANTSA v. France* European Committee on Social Rights (2007),

[9] *Government of South Africa and others v. Grootboom and others*, CCT11/00 2001 (1) SA 46 (CC), 4 October 2000, 2000 (11) BCLR 1169 (CC); *Jaftha and Another v. Van Rooyen and Another*, Constitutional Court of South Africa, 2004 Case No. CCT74/03; *Port Elizabeth Municipality v. Various Occupiers* 2005 (1) SA 217 (CC). Case No. CCT 53/03.

[10] For detailed reports on monitoring of implementation of the ICESCR by the UNCESCR, see web site: www2.ohchr.org/english/bodies/cescr/. The UNCESCR has now developed an Optional Protocol on Economic, Social and Cultural Rights which allows individual complaints of violations of such rights including housing rights to be made directly to the Committee. See: www2.ohchr.org/english/issues/escr/intro.htm

in relation to violations of the European Social Charter, further demonstrates the benefits of this holistic approach, while also benchmarking the laws, policies, regulations, codes, budgets and other measures applying to all aspects of national housing systems.

There is a powerful interdependency between rights and regulation (Morgan, 2007). Clapham (2006a, b) points out that globalization involves the reorientation of national governments in a climate where regulation and control are increasingly difficult. However, the new international regulation and governance approaches to global finance offer new opportunities. Indeed, the UN Special Rapporteur on Adequate Housing has proposed that housing rights be integrated at the international level in the regulation of financial markets (Rolnik, 2009):

The Special Rapporteur believes that the current crisis represents also an opportunity for reflection and to consider how to improve housing systems, policies and programmes so as to ensure adequate housing for all (para. 75).

States should ensure appropriate regulation of international financial activities in order to avoid future financial crises and their subsequent effect on human rights and adequate housing (para. 89).

Indeed, the level of globalization and privatization of elements of housing systems, may actually require that obligations are placed on non-State actors to ensure the effective implementation and protection of such rights (Clapham, 2006a, b).

The integration of international housing rights norms and jurisprudence into national housing regulatory systems represents the next step in the realization of these rights. For instance, all draft legislation on housing systems can be housing rights proofed. House planning and building regulatory agencies, such as local authority and institutional housing finance regulators, can incorporate housing rights objectives. Equally, all development plans and zoning approvals could be required to demonstrate how they address housing rights criteria. Regulatory agencies could refer violations, as set out in the Limburg Principles (1986) and Centre of Human Rights (1997) to the courts to be adjudicated. Appropriate sanctions can be enforced for violations of housing rights across all elements of housing systems.

One of the key issues in ensuring the effective enjoyment of housing rights is justiciability. Contrary to what is sometimes suggested, neither the far-reaching nature of housing rights obligations, or their character as social or economic rights, present a major obstacle to conferring justiciable housing rights on persons within national legal systems. Courts have regularly enforced housing rights derived from case law, legislation and constitutional provisions. Indeed, a significant overlap exists between international housing rights and rights conferred by national private and public constitutional, legislative and case law (COHRE, 2000). However, there are many areas where national laws do not provide the equivalent protection to that set out within international legal instruments. More research is required in this area.

King (2000) suggests that such rights do not provide a justification for social housing provision in themselves, but only exist if individual duties are institutionalized into a collective representative set of actions. Equally, there can be a tendency to shun the structures and dynamics of the housing systems, in favour of more complex definitions and descriptions of failures of housing rights implementation. But as Angel pointed out:

[...] there is little merit in a housing policy that solely focuses on the poor, hoping against hope that “the market” will take care of the rest, without paying any attention to whether the market is functioning properly. When the market is not functioning properly, the poor are squeezed as well (2000, p. 74).

Housing rights must be directed to the whole of housing systems, rather than merely social housing entitlements. Of course, the basic right to shelter is a minimum core requirement of the implementation of housing rights. But housing rights must involve more than this minimalist proposition.

4.3 *Epistemic communities*

One of the major issues relating to a mainstreaming or integrating of human rights into the institutions which comprise housing systems is their acceptance and use by those networks of legal and other professionals involved in establishing and maintaining these systems. These may be described as “epistemic communities” or networks of professionals with recognized expertise and competence in a particular domain, and an authoritative claim to policy-relevant knowledge within that domain or issue-area (Haas, 1992). Haas (1992, p. 3) states that while the professionals may be from a variety of disciplines and backgrounds, they must have:

- a shared set of normative and principled beliefs, which provide a value-based rationale for the social action of community members;
- shared causal beliefs, which are derived from their analysis of practices leading or contributing to a central set of problems in their domain and which then serve as the basis for elucidating the multiple linkages between possible policy action and desired outcomes;
- shared notions of validity – that is, intersubjective, internally defined criteria for weighing and validating knowledge in the domain of their expertise; and
- a common policy enterprise – that is, a set of common practices associated with a set of problems to which their professional competence is directed, presumably out of the conviction that human welfare will be enhanced as a consequence.

Housing systems contain many such epistemic communities in the professional areas of law, planning, management, development, finance, construction, design and other areas.

Mainstreaming human and housing rights involves the reorganization, improvement, development and evaluation of policy processes so that a human rights perspective is incorporated in all policies at all levels and all stages (McCrudden, 2004). Thus, the effective implementation of housing rights requires their adoption by the various epistemic communities within housing systems across the world. Yet, aside from the vagueness and lack of specific, measurable, achievable and time limited nature of much of public international human rights rhetoric, there are many challenges in assigning to housing professionals, the role of housing rights advocates. Impact assessments and other monitoring systems suffer from creative compliance problems (McCrudden, 2004). Significant political issues arise when human rights are presented as “trump cards” by rights holders, in the context of the varied and multiple competing bureaucratic and economic interests represented by professionals in housing systems. Relying on litigation can result in lengthy and costly disputes, and while housing systems, like other systems, must reproduce themselves to survive and are subject to law, they must manage also dissent for their survival (Luhman, 2004, p. 15). Of course, housing rights may actually

valorize hitherto overlooked interests in housing systems, such as those excluded from markets, immigrants and those without entitlements (Hammarberg, 2009). This may force States to reorder resources towards meeting their needs. Integrating education on housing rights into professional training may be useful here.

5. Conclusion

Cowan (1999, p. 2) describes a situation where “academic housing lawyers have rather marginalized themselves by strict adherence to doctrinal approaches which cannot ‘speak’ to housing experience”. So too with housing rights advocates and housing systems. Today we live in a world described 20 years ago by Castells (1989), where the combination of new information technologies and socioeconomic restructuring is reshaping cities and regions, ushering in new urban forms, with deprivation and poor housing locations also distinguished by under-investment in such technology and services. A new constellation of globally networked cities, sometimes referred to as the “urban archipelago”, is emerging, which have more in common with other cities than with their hinterlands, but which are also creating a “planet of slums” (Davis, 2006). In this context, the traditional aspiration nature of housing rights within public international law needs to be sharpened, in order to respond effectively to complex housing systems, operating at many levels and within increasingly contested sets of housing and political priorities. Professionals within housing systems could also find ways to incorporate housing rights into their laws, policies, processes and decisions.

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