



# IMPLEMENTING THE **RIGHT** TO ADEQUATE HOUSING:

A Guide for Local Governments and Civil Society

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# INTRODUCTION

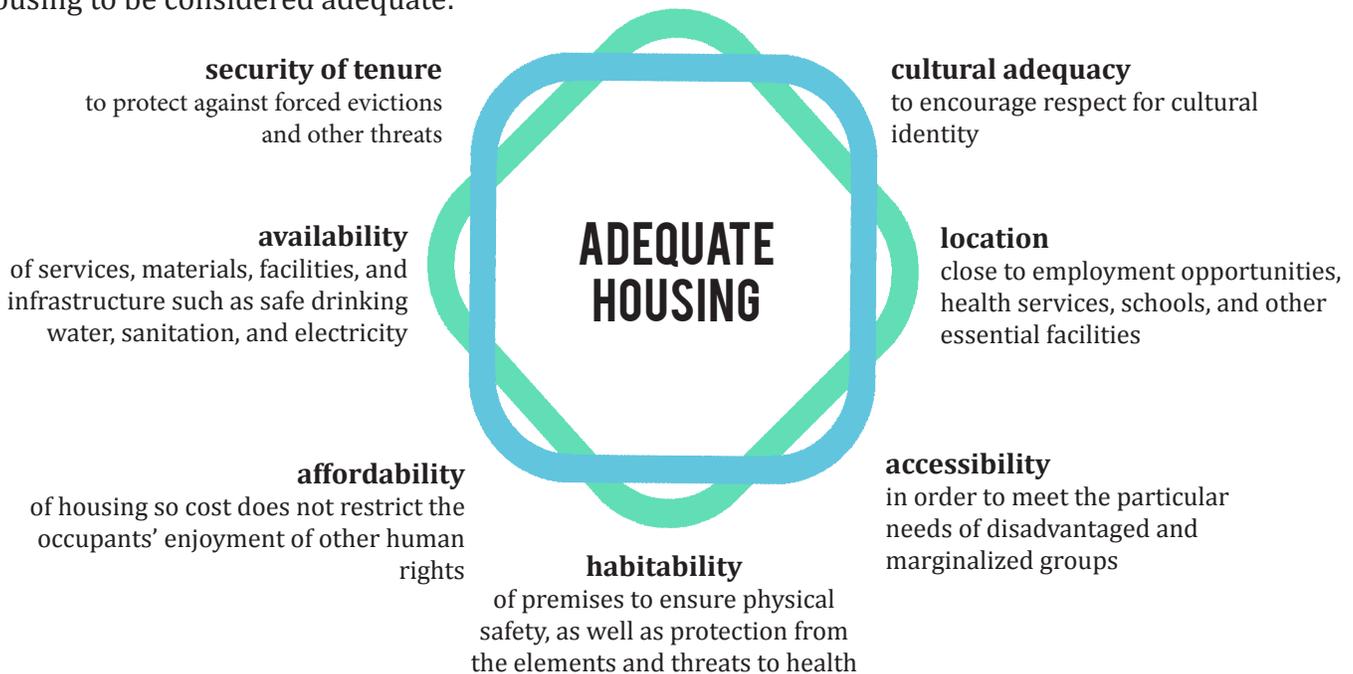
## THE RIGHT TO ADEQUATE HOUSING AND LOCAL GOVERNMENTS

Although first recognized in the 1948 Universal Declaration of Human Rights, the right to adequate housing remains a distant reality for millions around the world who face displacement, forced eviction, homelessness, and substandard living conditions. Cities today are growing at a challenging pace while social welfare budgets are shrinking. It's now more important than ever to develop new strategies and partnerships to protect the basic human rights of the world's vulnerable people.

In December 2014, UN Special Rapporteur on the Right to Adequate Housing, Leilani Farha, issued her first thematic report to the UN Human Rights Council. This report serves as a guide for implementing the right to housing at the local level. It reminds States that local governments play an important role in realizing the right to adequate housing, and that sub-national governments at all levels, are under a legal obligation to respect, protect, and fulfill international human rights, including the right to adequate housing for all people.

## WHAT IS ADEQUATE HOUSING?

Under international law, what is considered 'adequate' varies from country to country and from community to community. According to the UN, the following criteria must be met in order for housing to be considered adequate:



### THIS GUIDE IS FOR YOU IF...

- You are a leader working on city issues
- You are a local official
- You are a provincial or regional representative
- You are a member of civil society such as a non-profit or NGO worker



This Guide is designed to help local governments and civil society understand the right to housing and the challenges faced when addressing this right at the local level.

### IN THIS GUIDE, YOU WILL LEARN...

- Why local government action is essential to the fight for basic housing rights.
- About innovative new programs emerging in cities and regions throughout the world to tackle difficult housing issues and promote local accountability for housing rights violations.



Whether your role is to create and implement policy or to advocate for human rights, this Guide gives you a starting point for developing strategies to realize the housing rights of your community.

# CAPACITY & CHALLENGES

## THE UNIQUE POSITION OF LOCAL GOVERNMENTS

National and local governments each have a role to play in realizing the right to adequate housing. While all countries divide responsibilities differently between various levels of government, national governments are usually better suited to carry out certain tasks, like distributing resources throughout the country, while local governments are better placed to provide their communities with basic services such as water, sanitation and electricity.

In most countries, local governments are responsible for things such as land-use planning, enforcing building standards, and providing emergency shelters. Even when national governments develop programs related to housing issues, it's usually local officials who make decisions about where housing is built or who receives housing subsidies or benefits under a particular program. For these reasons, local governments have a more immediate and direct impact on the housing rights of local residents compared to national governments.

### LOOKING AT YOUR OWN COUNTRY, CONSIDER THE FOLLOWING QUESTIONS:

- What is the role of local government and what are its responsibilities?
- How might these responsibilities affect the right to adequate housing?
- What are some specific decisions taken by local government that relate to housing rights?
- How did these decisions affect local residents?

By answering these questions, you'll begin to understand the unique position of local government in your own country and the various ways its decisions impact the right to adequate housing.

In this Guide, the term **LOCAL GOVERNMENT** refers to any local or subnational government in a country.

#### *It includes:*

- districts
- villages
- cities
- boroughs
- provinces
- municipalities
- towns and indigenous governments

## DECENTRALIZATION

Decentralization has transformed the role of local government in recent years. This refers to the global trend of national governments transferring more and more of their responsibilities to local governments. The result is that local governments now have a broader range of responsibilities than ever before.

When it comes to the right to adequate housing, decentralization has created challenges. In theory local governments have more authority to address housing issues, but in reality this responsibility is rarely accompanied by more resources. Local governments are often left to develop and administer programs but lack the capacity to do so effectively. Decentralization can also create confusion about which level of government is responsible for certain functions, which makes it difficult to hold governments accountable for their actions.

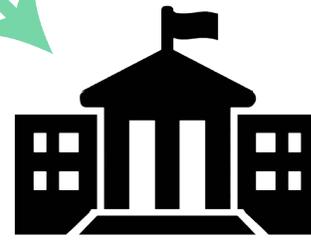
Any discussion or policies relating to housing and the role of government should include human rights.

# INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

(Including the right to adequate housing)



**NATIONAL GOVERNMENT**



**LOCAL GOVERNMENT**

Better suited to:

- Ensure a fair distribution of resources
- Develop and enforce national standards
- Monitor and compare programs in different regions
- Oversee regulation

Better suited to:

- Manage basic utilities
- Conduct planning, development and zoning
- Provide emergency shelter
- Regulate public space
- Work with local civil society & private sector to encourage community participation



Figure 1. Decentralization and the right to adequate housing

## CHALLENGES FACED BY LOCAL GOVERNMENTS

### *Inadequate resources*

Because local governments rely on national governments for funding, they don't always have the financial resources they need to develop effective policies and programs. This not only makes it difficult to tackle basic housing needs, but also makes it harder for local governments to respond to changing conditions or crisis situations.

### *Insufficient knowledge and capacity regarding the right to adequate housing*

National governments are responsible for signing the international human rights agreements that in turn create legal obligations for local governments. Local government officials, who are bound to respect international human rights, don't always receive information about these obligations and/or training about human rights issues. Additionally, there might not be mechanisms in place to hold local officials accountable if unfair decisions are made that impact the housing rights of people in their communities.

### *Overlapping and unclear responsibilities*

The different responsibilities of national and local governments are complicated and they often overlap with one another. In South Africa, for instance, the different roles of the various levels of government became a key issue in the landmark Grootboom case. In that decision, the Constitutional Court found that a lack of coordination between the different governments contributed to the suffering of South Africans who were waitlisted for public housing. This important decision emphasized the need for governments to have clear roles that are flexible enough to meet the needs of vulnerable people.

### *Discrimination*

Discrimination against migrants, refugees, and ethnic or religious minorities is often a serious problem at the local level because of a tendency to exclude 'outsiders' from participation in the community. As well, homeless people may be especially stigmatized by local officials because of local pressure to exclude them.

## READING THROUGH THESE CHALLENGES, THINK ABOUT YOUR OWN COUNTRY.

- Which housing challenges affect your local government most?
- What can be done to address these challenges?
- Can you think of other housing challenges that are unique to your country or your local government?
- What solutions have been put in place?

## THE IMPACT ON THE COMMUNITY

The challenges listed above make it difficult for local governments to address housing issues, and it is the most vulnerable members of the community who suffer with inadequate housing and no clear solution.

People who don't have adequate housing face an unfamiliar web of policies, programs, and other government decisions when they try to claim this basic right. There may be very little information available to help them navigate through this confusion.

Making matters worse, people without adequate housing have trouble accessing justice at the local level. This is largely because most local governments don't have a process in place to allow a resident to challenge a local decision or policy that impacts their housing rights. As well, those without adequate housing typically don't have the financial resources needed to bring a legal claim to a local court or tribunal. Those who do challenge housing violations and receive a ruling in their favour may face local government officials who choose not to follow the court's decision, leaving residents with a victory in name only.

It is important to note that many people without adequate housing are members of marginalized groups, like women, ethnic or religious minorities, indigenous people, or people with disabilities.



Members of these groups are especially vulnerable to housing rights violations because they also face social exclusion and discrimination based on their gender, race, nationality, disability, or other characteristic.

## COMMUNITY IMPACTS: EXAMPLES FROM KENYA AND THE USA

In Kenya, the Constitution recognizes the right of all people to adequate housing and sanitation. For the residents of the Mukuru settlement in Nairobi, however, this guarantee is far from reality. These residents live in shacks on privately-owned land without sewage or proper plumbing. They've been unsuccessful in determining land title through the local government. Without this title, they lack security of tenure — i.e., they have no legal guarantee that they won't be evicted — and they are ineligible to apply for basic water, sewer, or electricity services. In order to claim their rights, they must confront a series of complicated regulations and decisions, as well as a number of different government actors working at different levels.



Source: 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).

A number of cities in affluent countries like the United States make it illegal to sleep or lay down in public. These laws target homeless people who are forced to sleep on the streets. Some cities even criminalize those who feed homeless people. These laws are discriminatory, but challenging them means facing different levels of government and laws ranging from constitutional law to local housing ordinances.



Source: National Center on Homelessness & Poverty, No Safe Place: The Criminalization of Homelessness in U.S. Cities



## EMERGING INITIATIVES

In cities and regions throughout the world, local governments and civil society are working together to realize the right to adequate housing. These partnerships use the principle of subsidiarity — the idea that elected local officials are better placed to make decisions that impact the local community — to empower the participation of local residents in new initiatives. Two important initiatives are the development of human rights cities and of local access-to-justice mechanisms.

**While you're reading this section**, consider whether the examples below would be appropriate for your community and what steps could be taken to make these initiatives a reality.

## THE HUMAN RIGHTS CITY INITIATIVE

The Human Rights City initiative brings together city governments, civil society, experts, private companies, and local residents to improve the quality of life in their cities by promoting human rights. Usually, this involves the creation of a human rights charter or other document at the city level. Seoul, in the Republic of Korea, became a human rights city in 2012 when it adopted a city ordinance to protect and promote the human rights of its residents, including the right to adequate housing. Seoul's city ordinance establishes new human rights policies, a human rights division in the local city government, a local committee on human rights, and an ombuds office to which local residents can take their complaints. The city ordinance also creates guidelines for forced evictions in order to protect the housing rights of its residents.

## LOCAL ACCESS-TO-JUSTICE MECHANISMS

In many parts of the world, local governments have implemented local mechanisms to give residents access to justice when their housing rights have been violated - a key element to ensure human rights are protected. These mechanisms include city-level human rights commissions, like the one in place in Bosnia and Herzegovina, as well as local ombuds offices, such as the one in Portugal.

### AS YOU REFLECT ON DECISIONS MADE BY YOUR LOCAL GOVERNMENT CONSIDER THESE QUESTIONS:

- What information is available to local residents about these decisions and other policies or programs?
- Are there ways for local residents to have their voices heard by the local government?
- Are there any mechanisms in place for local residents to challenge these decisions once they've been taken?
- What can be done to encourage change?

## CONCLUSION & RECOMMENDATIONS

The right to adequate housing is a basic human right and has long been recognized as such by international law. Making this right a reality for all people requires action and commitment from all levels of government. The role of local governments in realizing the right to adequate housing is greater than ever before, and there's a pressing need for local governments to build partnerships with civil society in order to achieve this goal.

Reflecting on the challenges and examples of innovative new ways to approach housing rights from the local level, consider the following recommendations to help you develop housing strategies grounded in human rights and tailored to the unique needs of your community.

## RECOMMENDATIONS FOR LOCAL GOVERNMENTS

- Learn about and participate in international human rights mechanisms, such as working with Special Procedures and reporting to treaty monitoring bodies
- Work with civil society to adopt a human rights charter that protects the right to adequate housing
- Encourage the participation of local residents in decisions affecting housing rights
- Identify the housing issues faced by marginalized groups in your community and find ways to address discrimination
- Work with the national level government to develop and implement a national housing strategy if one is not in place

## RECOMMENDATIONS FOR CIVIL SOCIETY

- Develop new approaches to help realize the right to housing in your community, such as through local hearings or panels
- Implement local initiatives to monitor the right to adequate housing
- Encourage and work with local governments to adopt a human rights charter
- Participate in international human rights mechanisms to raise concerns about the right to adequate housing in your community

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