



The constitutional right to housing

An international perspective

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“... The right to housing goes further than the right not to be subjected to arbitrary or forced eviction. It also involves a duty on the State to take effective action to enable its people to meet their need for a safe and secure home where they can live with dignity.”

Nelson Mandela Former President of South Africa



Research question

- *Does Housing deserve to be a Right?*
- *Does the formal anchoring of the Right to housing in the constitution makes a difference in practice? (Comparative analysis)*



Rights and Needs

*“Human rights assert that every human being, in every society, is entitled to have basic autonomy and freedoms respected and **basic needs satisfied**.*

These claims by every individual against his society are designated “rights”, presumably in some moral order, perhaps under “natural law”. The society has corresponding duties to give effect to these rights through domestic laws and institutions.”

Henkin (1981)

Henkin L. (1981) *The international bill of rights: the convention on civil and political rights*. Columbia University press, New York.



What are basic needs?
Does housing qualify as one of them?

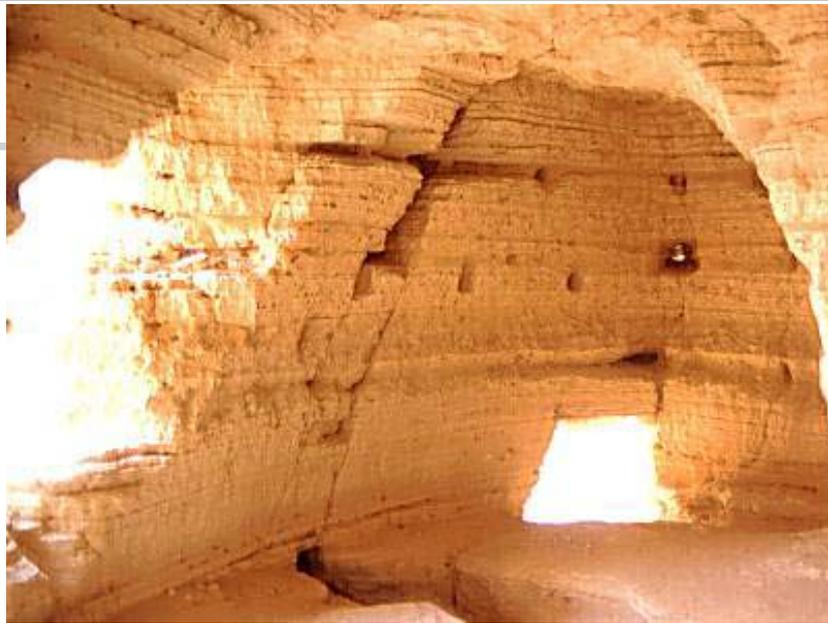


Orangutan in Eastern Islands



Chimpanzee in Africa





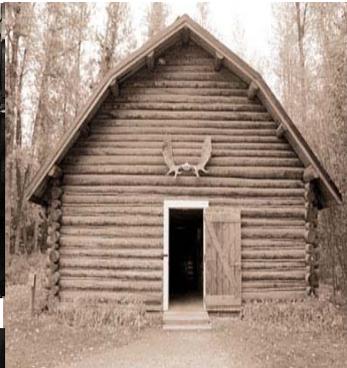
PRIMITIVE MAN MADE SHELTERS



RURAL HOUSING



KITCHEN



OUTHOUSE



BEDROOM

WATER



WC



KITCHEN



LIVING ROOM



URBAN HOUSING

15TH CENTURY

18TH CENTURY

17TH CENTURY

OUTHOUSE

WATER PUMP

BEDROOM

KITCHEN AND DINING-ROOM

STAIRS

OUTHOUSE

**19TH-20TH CENTURY
URBAN HOUSING**



BATHROOM

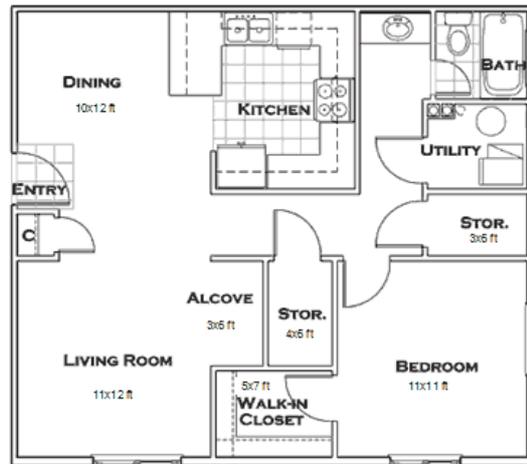
KITCHEN



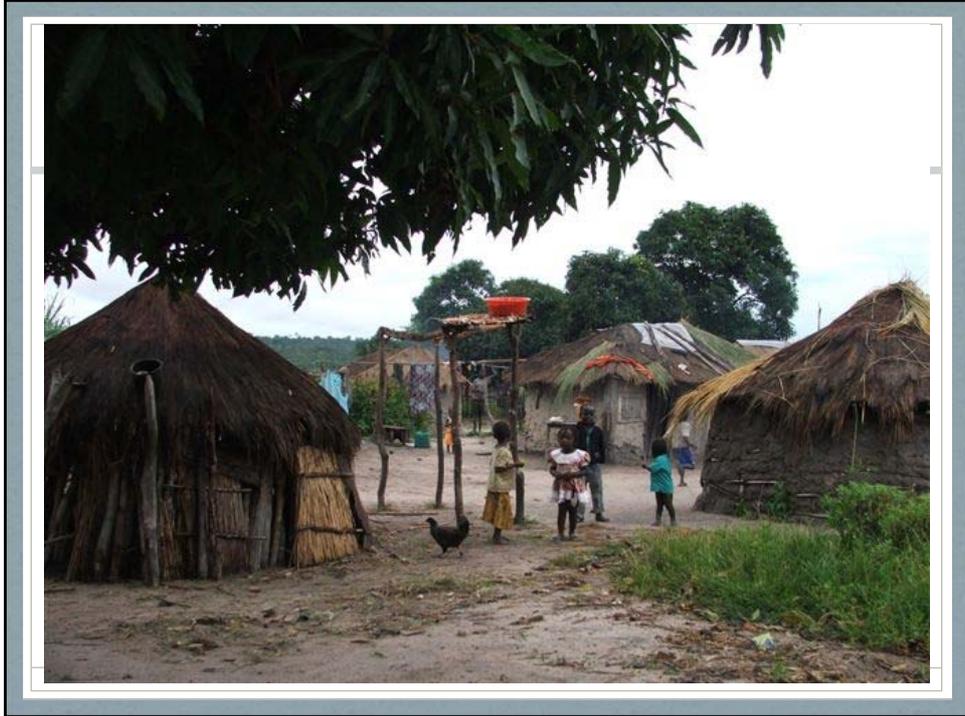
BEDROOM

TOILET

21ST CENTURY



ONE-BEDROOM STANDARD UNIT







Right to housing

Who has the right?

What is meant by housing?

Whose responsibility?

How much does it cost?

When? And Where?



Universal Declaration of Human Rights

The human 'right to housing' was unanimously adopted by the world community (130 states) in 1948.

Article 25(1)

*“Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, **housing** and medical care”*



The International Covenant on Economic, Social and Cultural Right

1966 ICESCR leading statement of international law relating to housing rights in its Article 11(1):

*“The State parties recognize the right of everyone to an adequate standard of living for himself [herself] and for his [her] family, including adequate food, clothing and **housing**, and to the continuous improvement of living conditions.*

***The States Parties will take appropriate steps**, individually and through international assistance and co-operation, especially economic and technical, 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.”*



Some examples



Greece: Constitution (1975)

Art. 21(4).

The acquisition of a home by the homeless or those inadequately sheltered shall constitute an object of special State care.

Source: Translation by Louis Pagonis, in Flanz, (ed.), 1998.



South Africa: Constitution (1996)

Article 26. Housing

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

Article 28. Children

- (1) Every child has the right - to ... shelter....



Portugal: Constitution (1976)

Fourth revision based on Constitutional Law
No. 1/97 of 20 September 1997

Article 65. Housing and Urban Planning

- (1) All have the right, both personally and for their family, to a dwelling of adequate size, that meets satisfactory standards of hygiene and comfort and preserves personal and family privacy.
- (2) In order to ensure the right to housing, it is incumbent on the State to:
 - (a) draw up and implement a housing policy as part of general national planning and to support plans for urban areas that guarantee an adequate network of transport and social facilities;
 - (b) promote, in conjunction with local authorities, the construction of economic and social housing;
 - (c) promote private construction, when in the public interest, and access to privately owned or rented dwellings; and
 - (d) encourage and support the initiatives of local communities for the resolution of their housing problems and for promoting the establishment of housing cooperatives and their own building projects.
- (3) The State shall adopt a policy for the institution of a system of rents that are compatible with family incomes and for individual ownership of housing.

Source: Translation by Gisbert H. Flanz, in Flanz, (ed.), 1999b.



France: Constitution (1958)

Law 90/449 of 31 May 1990 (towards the Implementation of right to housing)

Article 1

The guarantee of a right to housing constitutes a duty of solidarity for the nation as a whole. Any person or family finding difficulties because of the inability of his resources to meet his needs has the right to collective assistance under conditions fixed by law that will ensure access to decent and independent housing where he can maintain himself.

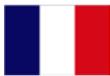
Article 4

The departmental plan, established for a definite duration, define the categories of persons who in enforcement of the first article, can be called to benefit from it; This plan must grant priority to persons and families without any accommodation or those threatened with eviction who have nowhere to move, or those living in slums, precarious or insalubrious dwellings or improvised accommodation;

The plan analyses the needs and basic salary, per housing pool of inhabitants, the objectives to guarantee the attainment of housing by the centralization of their requests for housing, the creation of a supplementary offer of houses and the establishment of financial aid and accompanying specific social measures. The departmental plan is made public by the President of the General Counsel and the Representatives of the State in the department in accordance with opinions of the Departmental Council of Integration.

Article 7

The financing of the "funds of solidarity" for housing are guaranteed by the State and the Department.



France: Constitution (1958)

Law n°2007-290 of 5 March 2007

instituant le droit au logement opposable et portant diverses mesures en faveur de la cohésion sociale (1).

« Art. L. 300-1. - The right to a decent and independent housing mentioned in article 1 of law 90/449 of 31 may 1990 is granted by the state to every person that resides regularly in French territories and with permanency conditions defined by act in the Conseil d'Etat, that is unable to achieve housing by his own means.



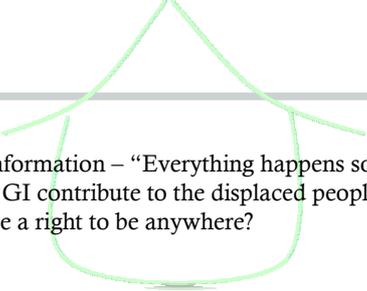
Conclusions so far

- The full realization of economic, social and cultural rights will remain an unfulfilled aspiration in many countries, so does the right to housing.
- One of the barriers to achieving housing rights has been the absence of a universally recognized definition of the set of entitlements comprising this norm.
- The widespread legal recognition of the right to adequate housing is of the utmost importance. In practical terms, however, it is necessary to spell out the specific steps which Governments should take to turn these legal rights into concrete realities for the people who are entitled to them.



Next Research steps

- Analysis of the constitutional right to housing variations and contents in a comparative frame.
- Study of the ways in which the constitutional right has been locally translated into operative terms and policy.
- Data collection and mapping of local standard housing, magnitude of housing need, rate of housing vacancy and measures taken to release unutilized land for the purposes of housing.
- Comparison of cases and deduction of “what difference has the right made in practice”



In Geo Information – “Everything happens somewhere”.
How can GI contribute to the displaced people who
don’t have a right to be anywhere?

Thank You