Housing

FRAMEWORK AND OVERVIEW

Since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, the concept of human rights has been further expounded upon, enshrined, and granted protection in various other international instruments and agreements. Foremost among these are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), two instruments which, together with the UDHR and the human rights provisions of the United Nations Charter comprise what is known as International Bill of Human Rights.1 These documents have gradually come to enjoy widespread acceptance and support internationally, and as of 2001, 145 countries worldwide have become States Parties to both the ICCPR and the ICESCR.

Of equal significance to this pervasive acceptance of human rights and, consequently, the strengthening of its position in international law and within domestic legal systems, is the growing recognition of the traditionally under-emphasized area of economic, social, and cultural rights. These "second-generation" rights, as they are sometimes referred to (perhaps with some disdain), are slowly gaining acknowledgement as "legitimate," and perhaps more importantly, "legal," rights that can and should be asserted and enforced against States.

Among these economic, social, and cultural rights, the right to housing has, in the opinion of many advocates, advanced the furthest.2 This right, which is recognized under the ICESCR as part of the right to an adequate standard of living,3 has likewise been recognized in other human rights instruments and declarations of the UN.

The right to housing was first recognized by the United Nations General Assembly in 1948 through Article 25(1) of the UDHR as part of the recognition of the right to an adequate standard of living. The said provision says that "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 and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

This UDHR provision, and consequently, the right to housing itself, was likewise enshrined in the ICESCR when it was drafted in 1966.4 The ICESCR provision, which is the principal recognition of this right under international law, provides that "The States Parties to the present covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

Under Article 2(1) of the ICESCR, it is provided that "Each State Party to the present Covenant undertakes to take 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." This, in essence, lays the basic blueprint that a State must follow in working for the realization of the rights specified in the Covenant, including the right to housing.

"All appropriate means" has been interpreted in the Limburg Principles5 to include not simply legislative, but also administrative, judicial, economic, social and educational measures.6 In particular, States Parties must endeavor to provide effective remedies including, where appropriate, judicial remedies for the vindication of the right.7 According to the Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment No. 4 these legal remedies may include a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; and (e) complaints against landlords concerning unhealthy or inadequate housing conditions.8

On the other hand, progressive realization is to be understood as obligating States Parties to move as expeditiously as possible towards the realization of the right.9 Some obligations, in fact, may require immediate implementation by the concerned State.10 This clearly repudiates the practice of some States of exploiting the notion of "progressive attainability" to altogether evade their obligations under the Covenant.11

The same idea is expressed by the CESCR in General Comment No. 4 (1991), when it states that "[r]egardless of the state of development of any country, there are certain steps which must be taken immediately." These would include measures required to promote the right to housing that would only require the abstention by the Government from certain practices and a commitment to facilitating "self-help" by affected groups.12

Likewise, due priority must be given by States Parties to social groups living in unfavorable conditions by giving them particular consideration when acting towards the realization of the right.13

The exact nature of these obligations was further expounded upon in the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights drafted in January 1997, ten years from the drafting of the Limburg Principles. Under these guidelines, three specific obligations of States related to economic, social and cultural rights were identified – the obligations to respect, protect, and fulfill.14 The guidelines specifically mentioned that in the case of the right to housing, a State Party would be breaching its obligation to respect the right if it engaged in arbitrary forced evictions.15

Furthermore, the Maastricht Guidelines established that State Parties to the ICESCR had both obligations of conduct, i.e., to undertake actions intended to achieve realization of the economic, social and cultural rights, and obligations of result, i.e. to meet targets to satisfy a detailed substantive standard.16 The measures adopted by States Parties must therefore deal with both specific actions intended to promote realization of the right and ensure that specific goals relating to standards established for the right are met.

Insofar as standards are concerned, the CESCR has identified seven factors that must be taken into account when measuring the adequacy of housing in relation to the obligation to uphold the right.17 These are legal security of tenure, availability of services and infrastructure, affordability, habitability, accessibility, location, and cultural adequacy.18 While these factors are by no means exclusive, they do provide a fundamental guide to determining the adequacy and efficacy of State action to comply with its obligations to respect, protect, and fulfill the right to housing.

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The first factor enumerated above, security of tenure, is particularly significant since it relates to another important aspect of State obligations with respect to the right to housing – protection from forcible eviction. The CESCR in its General Comment No. 7 (1997) deals specifically with State obligations with regard to forced evictions.19

According to this document, "in view of the nature of the practice of forced evictions, the reference in article 2.1 to progressive achievement based on the availability of resources will rarely be relevant. The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions."20 To this end, legislation punishing private persons or bodies that commit forcible eviction should be promulgated.21 Furthermore, States are enjoined to enact legislation that included measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out.22

THE PHILIPPINE CONTEXT

Apart from its commitment to the right to housing as a State Party to various international conventions, the Philippines has likewise recognized aspects of the same right in its own organic law. The Philippine Constitution's provisions on "Urban Land Reform and Housing," highlight two fundamental mandates. The first is the commitment of the State to undertake a continuing program of urban land reform and housing with the end view of securing affordable housing and basic services to the underprivileged. The second is State obligation to respect and protect the right of the poor against forcible eviction.

While neither statement expressly recognizes a definite and specific "right to housing," these provisions nonetheless constitutionalize two important facets of the broader Philippine commitment to recognize such a right, namely the obligation to provide affordable housing to vulnerable groups and the prevention of forced eviction.

The above mentioned provisions of the Philippine Constitution were given statutory "teeth" with the enactment of the Urban Development and Housing Act of 1992 (UDHA).23 UDHA had two major components – the first dealt with the details of the constitutionally mandated program to provide affordable housing to the underprivileged,24 while the second provided protection against forcible evictions.25

Under the UDHA, the State was commanded to undertake "a comprehensive and continuing Urban Development and Housing Program." This program would be carried out principally by providing socialized housing – defined as housing projects for the underprivileged and homeless characterized by sites and services development, long term financing, liberalized terms on interest payments, and other benefits and incentives26 -- either through direct construction by the government or in cooperation with private developers.27

These housing projects would be undertaken on land secured by local government units within their respective jurisdictions, either through negotiated purchase or, in exceptional circumstances, expropriation.28 In addition, all new (non-socialized) private housing projects were required to develop an area for socialized housing equivalent to at least twenty percent (20%) of the total project area or total project cost.29

One novel component of the housing program under the UDHA was the Community Mortgage Program (CMP). Under this approach, government would finance (through long term loans) the

Under this approach, government would finance (through long term loans) the acquisition and development of land by legally organized associations of the underprivileged. Its principal intent was to assist the residents of blighted or depressed areas in purchasing the land they already occupied from the legal owners.30

Socialized housing projects under the UDHA, were required to have certain amenities and facilities to be considered legally "adequate." Far from being consistent with the seven (7) standards for adequacy under General Comment No. 4, however, these are confined to the very basic requirements of –

a. Potable water;
b. Power and electricity and an adequate power distribution system;
c. Sewerage facilities and an efficient and adequate solid waste disposal system; and
d. Access to primary roads and transportation facilities.31

Other services such as health, education, communications, security, recreation, relief, and welfare were to be planned and given priority.32 Likewise, accessibility of employment was to be considered "to the extent feasible," in determining the location of socialized housing projects.33

The other significant aspect of the UDHA was the protection afforded to underprivileged and homeless citizens from forcible eviction. The statute, as a general rule, prohibited eviction as a practice, but allowed for three exceptions – (1) when persons or entities occupied danger areas (such as railroad tracks or riverbanks) or public places (such as sidewalks or roads), (2) when government infrastructure projects were being implemented, and (3) when there was a court order for demolition.34 In any of these "authorized" evictions, however, the State was mandated to ensure compliance with eight requirements, which were:

1. Notice upon the affected persons or entities at least thirty (30) days prior to the date of eviction or demolition;
2. Adequate consultations on the matter of resettlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated;
3. Presence of local government officials or their representatives during eviction or demolition;
4. Proper identification of persons taking part in the demolition;
5. Execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;
6. No use of heavy equipment for demolition except for structures that are permanent and of concrete materials;
7. Proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures; and
8. Adequate relocation, whether temporary or permanent; Provided, however, that in cases of eviction and demolition pursuant to a court order involving underprivileged and homeless citizens, relocation shall be undertaken by the local government unit concerned and the National Housing Authority with the assistance of other government agencies within forty-five (45) days from service of notice of final judgment by the court, after which period the said order shall be executed; Provided, further, that should relocation not be possible within the said period, financial assistance in the amount equivalent to the prevailing minimum wage multiplied by sixty (60) days shall be extended to the affected families by the local government unit concerned.35

Failure to comply with the above requirements would give rise to criminal prosecution under the same law.36

One limitation on the efficacy of this protection, however, was that the law itself only extended it to persons who had constructed their dwellings prior to the effectivity of the UDHA.37 "New illegal structures," or those erected after the said date, were not afforded the protection of the law and were subject to summary demolition.38 This in itself is glaringly inconsistent with the standard set under international law.

While at present the UDHA is the primary Philippine statute concerned with housing, there are other laws which have bearing on the same subject. Civil laws on property39 and ejectment,40 for instance, form the traditional legal framework on property rights, and grant lawful owners the right to resort to court action to expel squatters from their land – forcibly if necessary.

In a similar vein, the laws on nuisance,41 the provisions of the National Building Code42 and the Local Government Code of 1991,43 allow the national and local governments to summarily evict persons whose dwellings are considered as nuisances or do not have the requisite building permits.

One would think that the seeming conflict between these laws and the provisions of the UDHA against forcible evictions would have been resolved by the courts. But thus far, there has been a dearth in UDHA-based litigation, and consequently, a scarcity of court decisions applying and interpreting the statute. The few decisions that have been decided by the Philippine Supreme Court do not rule squarely on the issue. In fact, rather negatively, the few decisions that have been penned tend to limit the scope of the protections afforded by the law with regard to forcible evictions, particularly with regard to demolitions brought about by court orders.44 In many of these cases, the high court has refused to apply the mantle of protection, as embodied in the eight mandatory requirements, afforded by Section 28 of the UDHA.

On the other hand, decisions of the Philippine Court of Appeals have even upheld the authority of government to conduct forcible evictions under the authority of prior laws, even as against the clear protection provided by the UDHA. For instance, in Kahanding Neighborhood Association v. Ponferrada,45 the Court of Appeals placed the power of local governments to abate nuisances under the Local Government Code over the protections guaranteed by the UDHA. Similarly, in City of Makati v. Tensuan,46 the court upheld the primacy of the provisions of the Civil Code concerning nuisances over and above Section 28 of the UDHA.

While significant aspects of the right to housing have been reflected in both the Philippine Constitution and its domestic legislation, there are nonetheless serious questions as to sufficiency of this incorporation.

With regard to the obligation to fulfill the right to housing, for instance, while the existence of a statutorily-mandated program for socialized housing is undoubtedly positive, the adequacy of the standards provided for by law fall short of the gauge established by the CESCR. For while the Committee has mentioned seven minimum standards in its General Comment No. 447 – legal security of tenure, availability of services and infrastructure, affordability, habitability, accessibility, location, and cultural adequacy – Philippine law has not incorporated the same. Essential services such as health and education, as well as access to employment, which form part of the international standard, are, in essence, to be provided on a "best efforts" under the mandate of Philippine law.48

The legal protections from forced evictions may also be seen to be somewhat inadequate. While the UDHA has generally disallowed eviction as a practice, it has created so many exceptions to this general rule – exceptions that in fact comprise most of the circumstances where forced evictions occur in the first place49 – that the prohibition is virtually rendered meaningless. And while the law has imposed eight requirements that must be complied with during evictions, these only apply to evictions of persons from structures built before the effectivity of the law – March 28, 1992. Thus a significant number of poor persons are in fact legally subject to forcible eviction, without the protection of law.

In addition, the few decisions that have emerged from the Philippine Supreme Court and Court of Appeals have further limited the scope of what existing protection there is. Despite express constitutional mandate and despite the clear wording of the statute, the courts have deemed fit to restrict the applicability of the UDHA in relation to nuisances and court ordered demolitions. Again, this has opened the floodgates to a whole slew of allowable evictions.

But while the law itself is rife with inadequacy, actual practice may even be worse. With respect to housing provision, the CESCR has even gone so far as to call attention to the fact that "existing expenditures on housing appear to benefit higher income groups at the expense of the poor."50 As of 1998, an estimated 2.5 million families in the Philippines still lived in illegal and substandard urban housing,51 despite the fact that at that time, the UDHA had already been in effect for six years.

The practice of forced eviction has an even more dismal record. According to the 1995 report of the CESCR, large-scale evictions continue to occur frequently and are estimated to have affected hundreds of thousands of persons since the Philippines ratified the ICESCR.52 This is borne out by more recent statistics that indicate that from 1997 to 2000, over 25,000 families were forcibly evicted in the capital city of Manila alone.53

The Philippine government has even taken the position that the Covenant does not provide protection from forced eviction, and the CESCR has criticized this view.54

Failure to adequately implement the law however, is simply one part of the problem. The total approach of government to the housing problem is in itself flawed.

All administrations since 1986 have essentially reduced the housing problem to a question of backlog. That is, in terms of a raw number of housing units that has to be produced in order to meet population requirements. The difficulty with this approach is that it essentially ignores the question of adequacy, and consequently, the question of sustainability of housing projects. So long as an urban poor family is assigned at some point with a housing unit, government checks it off as an accomplishment, regardless of whether that family actually is able to remain in the house. And the unfortunate fact is, in most cases, families subject to "resettlement" are not able to sustain their occupancy due to financial inability to keep up amortization payments, intolerable living conditions due to house quality or location, or other factors.

Thus, even while government tallies its supposed "successes" in housing delivery, on the ground, the actual implementation of the right to housing remains virtually non-existent. Furthermore, government has recently embarked on large scale disposition of the mortgages it holds over housing projects in favor of third party corporations. The net effect is that displacement of supposed "beneficiaries," (those already counted in government accomplishment reports) is now occurring on a large scale, further compounding the actual extent of the housing problem.

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RECOMMENDATIONS

To begin with, the notion of housing as a "right" must be taken seriously. The government housing program should adhere strictly to a rights-based approach to housing provision. Premium must be placed, not on quantity, but on sustainability – understood to mean that those families who are provided with housing must be able to remain in their houses for the long term – and thus, of necessity, on adequacy as defined under the seven (7) standards of the CESCR.

This will necessarily require additional legislation to more accurately reflect the international standard. As it stands, the UDHA, though a good beginning, is still woefully inadequate in terms of providing the necessary rights-based framework with which to approach the issue of housing.

Adequate financial resources should be allotted to the housing program. While participation by the private housing sector cannot be completely done away with, the tendency to over-rely on private developers should be avoided. This is particularly true with respect to housing for the vulnerable sectors – the poorest of the poor – the fulfillment of whose rights must be especially seen to by government.

But apart from strengthening and clarifying the government direction towards fulfillment of the right to housing, equal attention must be paid to preventing and perhaps penalizing acts which violate the right. UDHA's Section 28, in the 14 years it has been in effect, has failed to curtail forced evictions by any appreciable degree. Emphasis on peoples' participation in decision making pertinent to demolition, relocation, and resettlement activities has not been given worth. In all these violations, it is important that the law be made clearer, and be equipped with firmer protections (i.e. Sec. 45 to be amended by imposing higher penalty to violators may it be private or government entities). In the same vein, a specialized agency, perhaps equipped with quasi-judicial powers, designed to be more accessible to the underprivileged, should be created to enforce these provisions.