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Mandate of the Special Rapporteur on the right to adequate housing

I. Background and objectives of this questionnaire

In her upcoming report to the General Assembly, 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, Ms Leilani Farha, outlines some of the priority themes that she intends to address during her mandate (A/69/274).¹

Among others, she identifies the increasingly important role of governments at the sub-national level (state, provincial and municipal) in the implementation of the right to adequate housing. In many countries sub-national levels of government hold key responsibilities for a range of programs and policies linked to adequate housing, including not only housing programs but also income assistance programs, provision of water, sanitation, electricity and other utilities, tenancy and security of tenure legislation, programs assisting particular marginalized and vulnerable groups (such as migrants, persons with disabilities, women, Indigenous peoples, among others) and implementation of housing strategies and strategies to address homelessness.

Since under international law, accountability to human rights norms and standards operates primarily through the national level government, there are often particular challenges facing countries in ensuring implementation of the right to adequate housing by sub-national levels of government. The Special Rapporteur notes that this issue has not attracted concentrated attention from special procedures mandate holders though often arising in the examination of the situation in many countries. Hence, she has decided to focus her first thematic report to the Human Rights Council, pursuant resolutions 15/08 and 25/17, on the question of enhancing accountability to international human rights norms and standards of sub-national governments in relation to adequate housing.

The Special Rapporteur is mindful of diverse domestic arrangements of responsibilities among various levels of government. She wishes to better understand those arrangements and existing mechanisms for monitoring and accountability for the implementation of binding international human rights treaties related to the right to adequate housing. This questionnaire is designed to invite Governments and other relevant stakeholders to share information and inputs for the report, which will be presented to the Human Rights Council at its 28th session in March 2015.

This questionnaire aims to identify key challenges facing States in relation to the implementation of the right to housing by subnational levels of government and the primary means through which accountability to international human rights can be ensured. It also aims to identify illustrative examples of the kinds of issues faced by countries in the implementation of the right to adequate housing through sub-national governments and new and innovative strategies that have been developed to address these issues, or other examples of good practices. The Special Rapporteur also hopes to learn of sub-national initiatives to ensure accountability to the right to adequate housing, in particular to those vulnerable to rights violations (eg. incorporating the right to adequate housing, non-discrimination and other housing-related rights into city, provincial/state Charters).

¹ The report is available at: <http://www.ohchr.org/EN/Issues/Housing/Pages/AnnualReports.aspx>

II. Submission of Responses

Kindly bear in mind that the study does not intend to address the detailed distribution of responsibilities in each country, but aims to focus on an overview of challenges and examples of practices which will be of benefit to the Special Rapporteur in understanding the situation. Therefore, it is hoped that responses will provide a brief overview of how responsibilities are divided up and some concrete examples of challenges and how these have been addressed.

When possible, please identify links or provide copies of any law, regulation, policy or other document related to your answers. Due to limited capacity for translation, we kindly request that you submit your answers, if possible, in English, Spanish or French and, **no later than Friday, 31 October 2014**.

Please send your responses preferably via email to: srhousing@ohchr.org, or to:

UN Special Rapporteur on adequate housing
 Office of the High Commissioner for Human Rights
 Special Procedures Branch, Palais Wilson, Room 3-077
 CH – 1211, Geneva 10
 Switzerland

For any question, please contact the Special Rapporteur through her assistant, Ms. Juana Sotomayor, Special Procedures Branch- OHCHR: email: jsotomayor@ohchr.org; phone: +41 22 917 94 45.

III. Questionnaire

A. Distribution of responsibilities related to the right to adequate housing:

1. Please identify the levels of government (national, provincial/state, municipal) primarily responsible for the following: (where primary responsibility is shared please check more than one):

	National/ Federal	Provincial / state	Municipal	Explanatory Notes
Housing programme			✓	Social Housing is regulated by law but administered by the municipalities in cooperation with the social housing organisations. Social housing organisations are non-profit organisations that are responsible for administration of applications, waiting lists, etc.
Income support (eg: transfer payments to individuals, welfare, social security)			✓	Income support in form of subsidies to house rents,

and/or rent subsidies/supplements)				subsidies to heating costs (elderly people only), social welfare, etc are regulated by national legislation but administered by the municipalities. The Act on Social Services require the municipalities to facilitate homeless people with shelters, long-term housing with additional care for people with disabilities and elderly people, short-term housing for victims of domestic violence etc.
Tenancy and security of tenure legislation	✓		✓	The responsibility for security of tenure legislation is on national level. Tenancy is marked based – however the municipality and the housing organisations cooperate on setting house rents, etc. The housing organizations receive subsidies when constructing new houses. But the house rate is primarily based on market value.
Infrastructure (eg: Water/sanitation, electricity)		✓	✓	The municipality and the five Danish Regions share the infrastructural obligations.
Prohibition of discrimination in housing	✓			The Danish anti-discrimination

				legislation prohibits discrimination in housing only on the grounds of gender, race and ethnic origin. However the prohibition does not cover renting of rooms in private homes.
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2. What are the primary bases for the allocation of responsibilities among different levels of government? Please identify the appropriate provision(s) and provide a copy or link if possible:

Constitutional

National framework legislation or housing strategy: :

- Almenboligloven (Consolidation Act on Social Housing Act no 1023 of 21/08/13 <https://www.retsinformation.dk/forms/r0710.aspx?id=151792> (Danish only) Explanation in English <http://www.mbbi.dk/english>
- (Consolidation Act on Rent) Act No. 606 of 24/07/2005 <http://www.mbbi.dk/english/consolidation-act-rent>
- (Consolidation Act on Individual Housing Benefits) Act no .552, of 02/07/2006 <http://sm.dk/en/files/consolidation-act-on-individual-housing-benefits.pdf>
- Retsplejeloven (Act on Administration of Justice Act) Act no. 1139 of 24/ 09/2103 <https://www.retsinformation.dk/forms/r0710.aspx?id=157953>
- Serviceloven (Consolidation Act on Social Services) Act no. 1023 of 23/09/2014 <http://sm.dk/en/files/consolidation-act-on-social-services.pdf>
- Retssikkerhedsloven (Consolidation Act on Legal Protection and Administration in Social Matters) Act no. 1019 of 23/09/2014 <http://sm.dk/en/files/consolidation-act-on-legal-protection-and-administration-in-social-matters.pdf>
- Aktivloven (Act on Active Social Politics) Act no. 190, of 24/02/2012 <https://www.retsinformation.dk/Forms/r0710.aspx?id=140126> (Danish only)
- Ligestillingsloven (Consolidation Act on Gender Equality) Act no. 1288 of 19/12/2012 http://sm.dk/en/files/bekendtgorelse-af-lov-om-ligestilling-af-kvinder-og-maend_en.pdf
- Lov om etnisk ligebehandling (Act on Ethnic Equal Treatment) Act no. 438 of 16/05/2012 http://ec.europa.eu/ewsi/en/resources/detail.cfm?ID_ITEMS=37384

Sub-national level legislation or housing strategy

- Inter-governmental agreement
 - Other – Please explain
3. What role does the national level government play in relation to housing and related programs? How is compliance with the right to adequate housing structured between the national and sub-national levels? If possible please kindly provide concrete examples of how these roles and compliance mechanisms are operationalized. The Danish Parliament (Folketinget) adopts legislation related to adequate housing. In Denmark there the legislation does not provide a statutory right to housing. that ensures the individual right to access to housing for everyone. However, through the social welfare policies and legislation, Denmark does recognize its obligation to provide housing for the most vulnerable in society both through access to social housing, long term housing with additional care for people with disabilities and elderly people and municipality shelters for homeless people. It is the municipalities/local authorities that decide on implementation of legislation adopted at national level and in cooperation with the afore mentioned social housing organisations decide - taking the local context and market conditions into account – the administration of legislation in practice and if there should be built new social housing. The municipalities have, according to the Act on Social Housing – access to 25 percent of the social housing within its boundary. The municipality uses this right to provide housing for the most vulnerable citizens with low income. Social housing is otherwise open to the entire population irrespective of income and access to economic resources.
4. Where sub-national governments hold key responsibilities in relation to the right to adequate housing, please describe how programs and policies are co-ordinated nationally and what responsibilities remain with national level institutions. The programs and policies are monitored by the Ministry of Housing, Urban and Rural Affairs in accordance with the Act on Social Housing. The Act provides with provisions obligating the ministry to carry out statistics and follow-ups. The Ministry of Social Affairs monitor the municipalities compliance with legislation regarding shelters, housing with special care etc.
5. Where housing and related programs are administered by sub-national level governments, by whom and how are these programs funded? Are conditions attached to the funding which seek to ensure the resources are spent in a way that protects the right to adequate housing? How is this monitored? Funding comes from the general taxation of all citizens: partially from the State and partially from municipal/local government taxation. Funds for specific targeted interventions, for instance, the national strategy to reduce homelessness are allocated by the Parliament as part of annual social funds agreement. Approx. 500 mill. DKK was allocated as part of the four year strategy and distributed to 17 of the 98 municipalities to develop methods to reduce homelessness. When the strategy ended in 2013 approx. 10 mill. DKK was allocated to all municipalities to implement the strategy based on the evaluation and another 72 mill. Was allocated to reduce homelessness among youth which have increased significantly during the past years. There are different monitoring mechanisms: Denmark's Statistical collects data, Ministry of Housing, Urban and Rural Affairs has obligations to monitor the area, the national auditors also have a monitoring function. Furthermore, at Aalborg University there is a department dedicated to research in housing area, including allocation of funds.

B. Accountability of Sub-National Governments

1. Are sub-national governments legally accountable to the right to adequate housing on the basis of any of the following?

- International human rights law? (Yes/No) **Yes**
- Constitution/National Bill of Rights (Yes/No) **No**
- National or sub-national legislation (Yes/No) **Yes**
- State level or municipal level Bills of Rights/Charters (Yes/No) **N/A**
- Inter-governmental agreements (Yes/No) **Yes**
- Conditional financing (eg: budget transfers from national level to sub-national) (Yes/No) **Yes**

2. With respect to the above and where applicable, please identify: **Please see our legislation at stated above,**

- i. the relevant provision.
- ii. the sub-national levels of government to which the legal provision applies.
- iii. the means of enforcement (eg: courts, tribunals, national human rights institution, including ombudsmen, administrative mechanisms, etc.) and examples of how these means have been applied.

3. Are sub-national governments involved in State reporting to international human rights monitoring mechanisms and in implementing recommendations? (eg, UN treaty monitoring body, Universal Periodic Review). If so, how? Please kindly provide an example. **The association for local governments (KL) can get consulted in the process**

4. Apart from the legal and international accountability described above, what political or institutional accountability mechanisms are in place in your country through which sub-national governments are held accountable to standards or requirements linked to the implementation of the right to adequate housing (eg, Government review procedures, ombudsman/national human rights institutions, local human rights councils). Please provide any useful examples of how these have been used and, if possible, assess the outcome. **The Parliamentary Ombudsman can examine the practice of municipalities. "Rigsrevisionen" is an independent public institution with the primary task to audit the state accounts and to examine whether the Danish state's funds are administered in accordance with the decisions made by the Parliament. The Ministry of Housing, Urban and Rural Affairs has the supervisory authority regarding the municipalities' compliance with legal requirements. Administrative complaint mechanisms, access to remedy by civil law suit and the Parliamentary Ombudsman mandate to handle individual complaints are available to individuals when municipalities make legally binding decision in their individual cases.**

5. Please kindly identify what in your view may be the three most significant challenges in your country to effective accountability of sub-national governments to the right to adequate housing as guaranteed under international human rights law and identify key strategies or ideas for addressing these challenges. The Danish Institute for Human Rights is currently working on our annual Status Report. The next issue will contain a chapter on the right to adequate housing. So far, we have identified three challenges:

- Homeless people with no residence permit in Denmark are denied access to shelters and thereby to adequate housing.
- Eviction of whole families from their homes in social housing due to one member's criminal conviction. The Danish High Court has just passed a ruling upholding the social housing organisations' right to evict such families.
- The Danish Government has introduced new tools to better the residential composition of social housing complexes that in accordance to five criteria are identified as "ghettos". The tools are effective in changing the residential composition by denying applicants where at least one person from the household has been unemployed or is receiving social welfare for more than six continuous months, where at least one in the household is receiving pre-pension social security payments and where, has a criminal record or if the applicant has a migrant or descendent of migrants applying to a social housing complex with more than 50 percent residence from non-western countries. Applicants who have been denied have to be offered another adequate housing. However it seems like that this area is not being monitored – and therefore no data exists on whether these applicants get another offer for housing or not.

Thank you for your contribution