The UN Standards on Adequate Housing for Civil Society Action

O Paradigma da ONU sobre Moradia Adequada para a Atuação da Sociedade Civil

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Resumo

A Organização das Nações Unidas (ONU), através de seus órgãos de softlaw do sistema global de direitos humanos, construiu um paradigma sobre moradia adequada ao tempo de 22 anos. O Centro Dom Helder Camara (CENDHEC), como organização da sociedade civil, atua há 32 anos em prol do direito à cidade no Recife, Pernambuco, Brasil. Nesse tempo, a ONU delimitou sete aspectos básicos sobre moradia adequada combinados com o princípio da não discriminação. O CENDHEC se firmou a partir da construção do novo texto constitucional de 1988 e do uso de instrumentos jurídicos e administrativos de segurança da posse. A problematização consiste em se questionar sobre a contribuição da ONU, durante 22 anos, desde o trabalho do Comitê do Pacto Internacional sobre os Direitos Econômicos, Sociais e Culturais (Comitê PIDESC) até a Relatoria Especial sobre Moradia Adequada para o trabalho do Centro Dom Helder Camara, como organização da sociedade civil atuante no campo do direito à cidade. O objetivo geral do artigo é explorar os limites do conceito de moradia adequada a partir do sistema internacional e nacional de promoção e proteção de direitos humanos no Brasil. Já o objetivo específico cuida de delimitar as balizas axiológicas de atuação do CENDHEC, como entidade da sociedade civil organizada, aberta à experiência internacional.


Resumen

La Organización de las Naciones Unidas (ONU), a través de sus órganos de softlaw del sistema global de derechos humanos, construyó un paradigma sobre vivienda adecuada durante 22 años. El Centro Dom Helder Camara (CENDHEC), como organización de la sociedad civil, trabaja desde hace 32 años en favor del derecho a la ciudad en Recife, Pernambuco, Brasil. En ese momento, la ONU esbozó siete aspectos básicos de una vivienda adecuada combinados con el principio de no discriminación. El CENDHEC se constituyó a partir de la construcción
del nuevo texto constitucional de 1988 y la utilización de instrumentos jurídicos y administrativos para la seguridad en la tenencia. La problematización consiste en cuestionar el aporte de la ONU, desde hace 22 años, desde el trabajo del Comité del Pacto Internacional de Derechos Económicos, Sociales y Culturales (PIDESC) hasta la Relatoría Especial sobre Vivienda Adecuada para el trabajo del Centro Dom Helder Camara, como organización de la sociedad civil activa en el campo del derecho a la ciudad. El objetivo general del artículo es explorar los límites del concepto de vivienda adecuada desde el sistema internacional y nacional de promoción y protección de los derechos humanos en Brasil. El objetivo específico, por su parte, se ocupa de delimitar los faros axiológicos de actuación de CENDHEC, como organización de la sociedad civil organizada, abierta a la experiencia internacional.

Palabras clave: Seguridad de tenencia. Recomendaciones internacionales. Sistema internacional de derechos humanos.

Abstract

The United Nations (UN), through its softlaw bodies of the global human rights system, built a paradigm on adequate housing for 22 years. Centro Dom Helder Camara (CENDHEC), as a civil society organization, has been working for 32 years in favor of the right to the city in Recife, Pernambuco, Brazil. At that time, the UN outlined seven basic aspects of adequate housing combined with the principle of non-discrimination. CENDHEC was established from the construction of the new constitutional text of 1988 and the use of legal and administrative instruments for security of tenure. The problematization consists of questioning the contribution of the UN, during 22 years, from the work of the Committee of the International Covenant on Economic, Social and Cultural Rights (ICESCR) to the Special Rapporteur on Adequate Housing for the work of the Dom Helder Center Camara, as a civil society organization active in the field of the right to the city. The general objective of the article is to explore the limits of the concept of adequate housing from the international and national system for the promotion and protection of human rights in Brazil. The specific objective, on the other hand, takes care of delimiting the axiological beacons of action by CENDHEC, as an organization of organized civil society, open to international experience.

Keywords: Tenure security. International recommendations. International human rights system.

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Introduction

The right to adequate housing has been dealt with by the United Nations (UN) since 1991, through General Comment number 4 of the Committee of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Dom Helder Camara Center for Studies and
Social Action – CENDHEC – was created in 1989 and is contemporary with this international debate, although it did not have a stricter international operation at the time.

The ICESCR Committee tried to define the right to adequate housing as a combination of seven aspects: security of tenure, available infrastructure, economically accessible, habitability, accessibility for vulnerable groups, location and adaptation to local experience and techniques (ONU, 1991, pp.2-3).

At the time, CENDHEC acted strongly for the new constitutional text, in its final wording, articles 182 and 183. Unlike the UN system with its ability to detail the seven aspects inherent to the enforcement of the right to adequate housing, articles 182 and 183 of CF/88 establish that urban development will take place as the social function of the city is, in fact, respected with a guarantee of the well-being of the inhabitants (article 182). Combined with this, the special constitutional adverse possession, an instrument associated with the first aspect of the UN concept with security of tenure, possession in a broad sense, that is, to the point of being synonymous with the acquisition of property in article 183 (CENDHEC, 2021a). Here we have a combination of general rules and a legal-procedural means.

From 1991 to 2013, therefore, in 22 years, the United Nations Special Rapporteurship on Adequate Housing, at the time, when chaired by Professor Raquel Rolnik, complemented to seven inherent aspects to adequate housing with the principle of non-discrimination.

The Report of the Special Rapporteur on Adequate Housing of 2013 specializes in the first aspect brought in 1991 and goes beyond the instrument of constitutional adverse possession of 1988. The rapporteur takes up the issue of security of tenure and lists ten items to be observed. Thus, security of tenure must be understood as a complex aspect when it is linked to the right to adequate housing.

Complexity does not imply excessiveness that makes it unfeasible. Far from it, complexity implies that security of tenure must not be separated from its plurality of forms of.
occurrence, from continuous improvement, from local solutions, from the social function of property, from combating discrimination and gender inequality, from protecting activities economic, strengthening cooperation, empowerment of vulnerable groups in relation to state accountability and access to justice (ONU, 2013).

The problematization consists of questioning about the contribution of the UN, during 22 years, from the work of the ICESCR to the Special Rapporteurship on Adequate Housing for the work of Centro Dom Helder Camara, as a civil society organization active in the field of the right to the city.

The methodology of this research consists of designing the paradigm on adequate housing brought by the UN from 1991 to 2013 and how this paradigm can be the starting point for an update of the references worked by the Right to the City Program of Cendhec, as a milestone of its 32 years of existence and action in favor of human rights.

To this end, the path taken passes through the use of the bibliographic technique, with emphasis on the UN documents: General Comment number 4 of the Committee of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Report of the Special Rapporteur on Adequate Housing of 2013.

The general objective of the paper is to explore the limits of the concept of adequate housing from the international and national system for the promotion and protection of human rights in Brazil.

The specific objective, on the other hand, takes care of delimiting the axiological beacons of action by Cendhec, as an organization of civil society, open to international experience.

**UN Human Rights Bodies and Adequate Housing**
The international human rights systems, to which the Brazilian State is bound: global system and inter-American system, stand out for international recommendations on human rights. Of course, there are the decisions of the Inter-American Court of Human Rights in line with the hardlaw, but in terms of softlaw, the recommendations are the highlight.

In fact, international recommendations on human rights should not be understood as common language. The international recommendation has a prior basis that gives it a legal basis, that is, both based on the principle of international *pacta sunt servanda* and also on conventional ballast, therefore, it is not a mere option for the State to follow or not. It is an international stand of behave and also a way of implementing an abstract normative text, which application, eventual non-application and even adaptation to local contexts must be explained. The addressee of the rules contributes little directly to the definition of how the universe of conduct is actually implemented. Only exceptionally, while the rule is up to the legislator (CUNHA, 2010, p.106).

Well, with that in mind, we initially took the content of General Comment n.4 of the ICESCR Committee of 1991. In this document, the ICESCR Committee consolidated its experience on adequate housing since 1979 with 75 reports on the subject (DPSP, USP, MPF, 2018, p.257).

The ICESCR Committee established seven basic aspects of the right to adequate housing: security of tenure, available infrastructure, economically accessible, habitability, accessibility for vulnerable groups, location and adequacy to local experience and techniques. With this, it can be seen that the starting point is article 11, item 1, of the International Covenant on Economic, Social and Cultural Rights, which deals with the right to adequate life,

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1 Article 11. 1. The States Parties to the present Covenant recognize the right of everyone to a standard of living adequate for himself and his family, including adequate food, clothing and housing, and the continual improvement of his conditions of life. States Parties shall take appropriate measures to ensure the realization of this right, recognizing, in this regard, the essential importance of international cooperation based on free consent.
of which adequate housing is a part. The right to adequate housing is the result of interpretive on the right to adequate life and the right to housing, following this line of enforcement of rights. Hence, the importance of international recommendations. The enforcement of human rights is as important as the post-World War II civilization paradigm. So important that the State no longer holds the exclusivity of this achievement and is not the only authority to deal with it.

In turn, the United Nations Special Rapporteurship on Adequate Housing, in 2013, in a complementary way, brought ten more items on adequate housing, focused on the realization of aspect 1 of 1991, that is, the improvement in terms of legal security of tenure: the plurality of forms of tenure, continuous improvement, priority for local solutions, fulfillment of the social function of property, combating discrimination and gender inequality, protection of economic activities, strengthening cooperation, empowerment of vulnerable groups in relation to state accountability and access to justice (ONU, 2013).

The formalization of possession still passes through the registration of property, however, the customary ways of perceiving people's bond with their territories must produce legal effects, but this does not happen so easily.

Emphasize the continuum model, a large arrow that starts from left to right. This implies moving from informal means of perception over land rights to the arrowhead, where formal land rights are. This arrow shape suggests a binary and evolutionary line, that is, from informality (unwanted) to formality (seeking and modeling) on security of tenure (ROLNICK, 2015, pp.216-217). Two arrangements that less favor the plurality of forms of tenure and more

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2 The expression civilizational paradigm does not contain in itself the perfection of human cultural construction. Thinking about this paradigm means thinking about cultural hegemony from the west to the east, from the global north to the global south, from the center to the capitalist periphery, it means thinking about human rights critically, deconstruction from decolonial studies as well.

3 An example of this arrow can be accessed at: https://dai-global-developments.com/articles/from-land-tenure-regularisation-to-a-sustainable-land-register.
reinforce a paradigm of legality, which is not very accessible, mainly by people in irregular occupations.

It is also worth mentioning an aspect brought by UN-HABITAT: the participation of all stakeholders involved in the macro theme of adequate housing. In the case of favelas, the inclusive and general participation of state and non-state actors, residents and other people in situations of social vulnerability in the process of designing, planning, executing, monitoring and evaluating interventions in favelas provides the opportunity to better identification of the causes of the problems that afflict communities, as well as the definition of adequate solutions (UN-HABITAT, 2017, pp.25-26).

The Global System on Human Rights started from the right to adequate life, in its housing section, to build that the enforcement of this right passes through adequate housing and it is effective from seven basic aspects, from which the legal security aspect of possession unfolds in ten other conditions of effectiveness. This level of detail makes us recognize the complexity of the law from its conventional abstraction to its effectiveness before the person who owns the right, wherever he/she is, to which national jurisdiction he/she is subject.

And about the international agenda, the UN 2030 agenda, in Sustainable Development Goal 11 (SDG 11), it has the objective of aiming for sustainable cities. In this sense, the Economic Commission for Latin America and the Caribbean (ECLAC) maintains that cities are a nursery of ideas, culture and development. Hence, the goals were established: universal access to housing, access to safe and accessible transport systems, increase inclusive urbanization, protect cultural heritage, reduce deaths due to extreme events, reduce environmental impact and provide access to green áreas (CEPAL, 2021, pp.51-53).

Not even Brazilian civil society, with its characteristic commitment to a laboratory in public policy and with the spirit inherent to the recently enacted Federal Constitution of 1988, it has produced something in such detail, so the international system is a very important complement in the instrumental structure to the enforcement of human rights.
In terms of the performance of Brazilian civil society, we delimited attention to the experience of CENDHEC in its 32 years of existence for the purposes of this research, knowing that the right to the city is very well worked out by several other organizations.

The constitutive group of CENDHEC, after leaving the Justice and Peace Commission of the Archdiocese of Olinda and Recife, at the time of its dissolution, acted strongly on the theme of the right to the city during the national constituent assembly. Today, this action would be called a successful advocacy experience, in view of the arrangement of articles 182 and 183 of the 1988 Federal Constitution.

With this, we have the right to the city taken from the so-called urban policy. A general bias on guidelines for urban development with the election of the master plan as the basic instrument, with the social function of urban property, with the parameters for expropriation and compulsory use of urban lands (article 182). The other bias falls on the guarantee for the declaration of the acquisitive property. This bias concerns the special constitutional adverse possession: limit area, time, purpose of housing and non-existence of other ownership of property (article 182).

CENDHEC has acted in the access to Justice, either through the jurisdictional route itself, or through the administrative route. The jurisdictional route comprises the legal proceedings of adverse possession in communities in the special zones of social interest in Recife (ZEIS): Mustardinha, Mangueira, Entra Apulsó, Três Carneiros, Sítio Grande and Torrões. The administrative route comprises requests to the City of Recife for ten Special Use Concessions for Housing Purposes (CUEM) in the ZEIS Mangueira and 300 units of Urban Land Regularization in the ZEIS Mangueira and Mustardinha.

Furthermore, CENDHEC has worked in partnership with international bodies on adequate housing. In 2004, it participated in the on-site visit of the Rapporteur of the United Nations Special Rapporteurship on Adequate Housing and the National Rapporteurship on Adequate Housing in the dialogue between communities and the rapporteurs (SAULE
JUNIOR, CARDOSO, 2005). And more recently, with the sending of communications to the UN Special Rapporteurs (United Nations Special Rapporteurships on Freedom of Expression, on Adequate Housing, on Children's Rights, on Arbitrary Detention, on Summary, Arbitrary and Extrajudicial Execution) and the Inter-American Commission of Human Rights (CENDHEC, 2021b).

All this experience of accessing justice through national, administrative proceedings and international jurisdictions allowed CENDHEC to evaluate its performance and review its axiological pillars in the struggle for the realization of the right to the city.

In this past, it is worth noting the effort of the Brazilian federal government when it published the Right to Adequate Housing, a publication for the purpose of empowerment on the right to adequate housing, its constitutional and infraconstitutional basis, on socially vulnerable groups as the main target audience and, mainly, the ways in which this right is implemented and the usual misconceptions about the right to adequate housing (BRASIL, 2013). A punctual effort that is disjointed in view of the current actions and practices of the federal government.

In the 32 years of existence of CENDHEC, its bases are updated. This implies thinking holistically about all these factors: the city, life projects, access to social goods, Human Dignity, indigenous peoples, socially vulnerable groups, the social function of property, the right of consultation and deliberation, inclusive economic development and effective legal instruments in a long term reasonable.

This involves reflecting on the regularization of urban settlements and their difficulties, among them: the incorrigibility of many properties for regularization purposes (CARVALHO, 2019). Not all properties to be regularized must be incorporated into a mechanized regularization process. This also implies, in more detail, thinking from the urban contexts to be regularized that not all urban units should be regularized without proper adaptation to adequate housing standards. Irregular occupations exist, they are very real in most Brazilian cities. A concrete example is one of the results obtained by the Project carried out by CENDHEC for the
purpose of urbanization of the Mustardinha and Mangueira Neighborhood, still in systematization phase.

Maria’s (fictitious name of the person by CENDHEC) desires to see her house regularized is very strong, but she, without realizing it, has a “house” that does not conform to almost any legal or urban rule, with the exception of the subjective action of (...) owning a property\(^4\) (...). She lives in a physical space of 5m\(^2\), under the number 126-A (fictitious number too), with a wet area, called a bathroom, with masonry walls, without windows, but with a door, which gives her autonomy, in relation to house number 126 (also a fictitious number), with access to an alley and, from there, to the street, in Mustardinha.

Concrete situations such as Maria’s are realized at all times by the on-the-spot action of CENDHEC and of many civil society entities that work to implement the right to the city and adequate housing. These extreme situations demand a firm axiological basis from civil society entities, in order to always place it in the perspective of these vulnerable people, excluded from the human right to adequate housing.

In other words, Maria’s example is how Brazilians cities are illegal and how Brazilian urbanism has no planning and does not intend to know. The current bourgeois model of urbanism is not committed to the concrete reality, in which most cities are inserted. Urban ideas are not where they should be (MARICATO, 2000, pp.121-122).

**Civil Society Impacts**

\(^4\) Art. 1.238. Whoever, for fifteen years, without interruption or opposition, owns a property as his own, acquires the property, regardless of title and good faith; being able to request the judge to declare it so by sentence, which will serve as a title for the registration in the Real Estate Registry Office. Brazilian Civil Code of 2002.
The national and international experience makes the Dom Helder Camara Center for Studies and Social Action revisit its practices, its own local and national experience and be guided by the six basic theses for its performance.

These thesis are the outcomes of a long self assessment inside CENDHEC. Since 1998, judicial litigation became a very strong strategy to enforcement the right to adequate housing. However, in 2021, after 23 years, from 1284 lawsuits, only 10% are successful. It shows how Judiciary is not sensitive to vulnerable groups expectations, how Brazilian law is far from reasonable time and new strategies are urgent to be taken by civil society. It means to review social values and establishes new basis.

So, six new thesis:

Thesis 1: The City is recognized as a privileged space for the expression of aspects inherent to human dignity, for the realization of life projects, for access to social goods necessary for this realization, therefore, any form of discrimination that is not for the affirmation of fundamental rights to socially vulnerable groups constitutes a violation of Human Rights. Access to the City cannot be waived;

Thesis 2: The original occupation of Indigenous Peoples, Tribals and Traditional Communities, urban or rural, is a way of acquiring rights over the territorial extension and expression of its identity according to their traditional practices and their memory, even orally. This is an original acquisition prior to the formal legal order in force, based on tribal customs with binding legal effects;

Thesis 3: Individual or collective ownership is yet another form of acquiring rights over urban or rural lands. The social function of this property along the lines of the hardlaw and softlaw of Human Rights defines the limits of its usefulness, so that, outside these limits, the property is illegal;

Thesis 4: The right to adequate housing is a human right interdependent with others. This implies a technically safe construction, in a safe, accessible and adequate environment, without risks to the life and integrity of people, especially women, children and adolescents, elderly
people and people with disabilities, accessible, through sustainable modalities, to all spaces of the City, with legally secure possession and a stage for the most diverse cultural expressions;

Thesis 5: Economic development policies, programs and projects are legitimate insofar as they show a holistic approach and results, that is, combined with references and with a commitment to improving the social aspects of the City and the Communities affected by them. This implies listening and deliberation by the Communities, participating in the execution and sharing the results achieved;

Thesis 6: The legal and administrative instruments provided by the formal legal system must reflect a real accessibility for the enforcement of the rights to adequate housing and the City in its specificities. Any instrument of this nature that allows the perpetuity of concrete situations without a definitive decision within a reasonable time or that allows discriminatory decisions and/or without effective participation of the Communities in the deliberation and execution of public policies, programs and projects constitutes an instrument that violates Human Rights.
Conclusions

The problem brought up in this research concerns the contribution of the bodies of the global system of human rights, either the special rapporteurship or the treaty committee. In 22 years of building and reviewing the basics of adequate housing, the UN has effectively made a positive contribution to civil society.

In the case of CENDHEC, this international contribution, associated with its local-international experience, allowed a constant review of its paradigmatic bases to the point of building the six theses that move its action regarding the right to the city.

The ability to go deeper into normative interpretation by the softlaw system for the purpose of enforcement is a reality. This implies an extremely welcome legal creativity for an institutional and human jurisdictional context meshed in a hermeneutic exercise in the literalness of the legal or conventional text.

From the literal legal or conventional experience to the holistic experience, we have the example of the right to adequate life, from the right to adequate housing (conventional literality) to adequate housing, with security of tenure and quality of habitability being two aspects, for example, whose property Maria de Mustardinha does not have and becomes a challenge to land regularization for actors in this theme in the city of Recife.

International recommendations have the power to bring to the fore a normative content that cannot wait for the institutional exercise of hardlaw to be exposed. When it comes to human rights, there is no exclusivity of interpretive and effective source. Each and every person, individually or in groups, institutionalized or not, has the legitimacy to interpret human rights for the purpose of making them effective.

In these terms, CENDHEC, as a civil society entity with a history of defending human rights, which started from a first generation of Brazilian civil society in the period of redemocratization in the late 1980s, reflected on its foundations for the Right to the City
Program and built the six paradigmatic theses, pointed to the UN 2030 Agenda with the Sustainable Development Goals.

With that, it is not about “obeying” the international paradigm without any reflection. On the contrary, it takes care to elevate human rights to the condition of effectiveness from the performance of the most diverse actors and their experiences, in addition to showing that the rights inherent to the formation and realization of Human Dignity are not exclusive to any mythological panoptic entity.
References


