Sanctuary in the City: Beirut

With the support of:

Cities Alliance
Cities Without Slums

Housing & Land Rights Network
Habitat International Coalition

UCLG Committee on Social Inclusion, Participatory Democracy and Human Rights
The role of local governments/authorities and host communities

• Define refugees’ human rights;
• Identify relevant international legal sources and standards;
• Outline the roles and responsibilities of the state (central and local government) in refugees protection and assistance.
What Are Human Rights?

“Human rights are legitimate claims for the minimum civil, cultural, economic, political, and social needs that every human being has a right to enjoy because they are human.”
Principles of Human Rights *Erga Omnes*

- Universal
- Inalienable
- Indivisible, interrelated and interdependent
Human Rights Recognized as *Jus Cogens*

- The right to life (ICCPR, art. 6);
- The right to humane treatment (ICCPR, art. 7; ECHR, art. 3; ACHR, art. 5);
- Prohibition of criminal *ex post facto* laws (ICCPR, art. 15; ECHR, art. 7; ACHR, art. 9);
- Prohibition of genocide (CPPCG, art. 1);
- Prohibition of war crimes (Geneva IV, arts. 146, 149);
- Prohibition of slavery (ICCPR, art. 8; ECHR, art. 64, 4; ACHR, art. 6);
- Prohibition of discrimination on the basis of race, color, sex, language, religion, or social origin; (ICCPR, art. 4. ICCPR, art. 16; ACHR, art. 3);
- Prohibition of imprisonment for civil debt (ICCPR, art. 11);
- Prohibition of crimes against humanity (ICC Statute, art. 7);
- The right to legal personhood (ICCPR, art. 16; ACHR, art. 3);
- Freedom of conscience (ICCPR, art. 18; ACHR, art. 12);
- The right to self-determination.

(Predrag Zenović 2012)
Human Rights Recognized as *jus Cogens*

“a norm that enjoys a higher rank in the international hierarchy than treaty law and even “ordinary” customary rules. The most conspicuous consequence of this higher rank is that the principle at issue cannot be derogated ... by States through international treaties or local or special customs or even general customary rules not endowed with the same normative force.”
“All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local - are in a position to engage the responsibility of the State Party. The executive branch that usually represents the State Party internationally...may not point to...another branch of government as a means of seeking to relieve the State Party from responsibility for an action incompatible with the provisions of the Covenant.”

Local Governments’ Obligations under International Human Rights Law

- CESC General Comment No. 4: “the right to housing” (1991), para. 12;
- HRC General comment No. 25: Article 25 (Participation in public affairs and the right to vote) (1996);
- HRC General comment No. 27: Article 12 (Freedom of movement) (1999), para. 17;
- CESC General Comment No. 11: “Plans of action for primary education” (art. 14)” (1999), para. 7;
- General comment No. 12: “The right to adequate food” (art. 11) (1999), paras. 22, 25;
- CESC General comment No. 15: “The right to water (arts. 11 and 12 of the Covenant)” (2002), para. 51;
- HRC General comment No. 31: “The Nature of the General Legal Obligation Imposed on States Parties to the Covenant” (2004), para. 4;
- CESC General Comment No. 16: “The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3)” (2005), para. 42;
- “Harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific targeted documents,” HRI/MC/2005/3, 1 June 2005, para. 50;
- CESC General comment No. 19: “The right to social security” (art. 9) (2007), para. 73;
Who is Protected by International Law?

- Civilian men, women;
- Children/unaccompanied;
- People who are not taking an active part in conflicts (non-combatants);
- Refugees/Asylum Seekers;
- Internally displaced persons (IDPs);
- Humanitarian workers;
- Religious personnel.
Sources of Refugee Law

- General Assembly resolution 194 (1949),
- OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969),
- Cartagena Declaration on Refugees for Latin America (1984),
- Arab Convention on Regulating Status of Refugees in the Arab Countries
“Any person who owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it”.


UNHCR
The UN Refugee Agency
Two main pillars of humanitarian action:

Protection and Assistance
PROTECTION

What does it mean protection?

“all activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law; i.e., human rights law, international humanitarian law, refugee law”

- Safety
- Dignity/Freedom
- Transparency
- Empowerment
- Human Rights Approach
Protection from what?

Human Rights violations

Commission

Omission
The Right to Seek Asylum

UDHR Art.14 (1)

“Everyone has the right to seek and enjoy in other countries asylum from persecution”

Asylum is a basic protection for a temporary time, with the possibility of staying in the host country until a solution outside that country can be found.
A refugee has a right to be protected against forcible return. Art. 33 (1)

“...no refugee shall be sent (back) to a country in which his or her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion; or where there are substantial grounds for believing that s/he would be in danger of being exposed to torture”
Right of return
UN General Assembly resolution 194, 11 December 1948

11. Resolves that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible;...

...repatriation, resettlement and economic and social rehabilitation...and the payment of compensation...
Human Rights of Refugees

States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals...or...as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances with respect to ...

- Freedom of religion
- Legal personality
- Property and transfer of assets
- Freedom of association
- Access to courts and fair trial
- Employment, decent work, social security
- Welfare / rationing
- Housing
- Public education
- Public relief
- Administrative assistance
- Freedom of movement
- Identification
- Fiscal charges
- Freedom from arbitrary expulsion
The international scope of Human rights

Apply everywhere all the time (in times of peace and conflict)

Impose duties on states to uphold, promote and fulfill the rights of citizens
A Legal Framework for Human Rights

- International Human Rights Law
- International Humanitarian Law
- International Refugee Law
- National Constitutions and national law
Legal Obligation

For every right…

...there is a corresponding duty
## The Legal Instruments

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Human Rights and
Why examine local governance from a human rights perspective?

- Decentralization has followed the introduction of democratization reforms, in which human rights activists have often played a key role;
- Local government has assumed responsibility for numerous services related to health, education, housing, water supply, policing, taxation etc;
- Elections at local government level related to political empowerment, citizen involvement and delivery of public services become a major arena of policy formation;
- The responsibilities of states result from approve and ratify International human rights are relevant to all levels of government and to other institutions to which the state devolves authority;
- The realization of ESCRs are particularly relevant to local government responsibilities;
- The rights based approach is important at National/local governance to guarantee human dignity, constrain abuses of power and prevent competition for power degenerating into violent conflict.
Human Rights Obligations of Local Authorities and Local Governments

“The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.”


A state party “may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

“1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State. 2. An organ includes any person or entity which has that status in accordance with the internal law of the State. “

“The conduct of public affairs...is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right...should be established by the constitution and other laws.”

HRC General Comment No. 25: Article 25 (Participation in public affairs and the right to vote) (1996), CCPR/C/21/Rev.1/Add.7, 27 August 1996
The human rights framework places an obligations on states and all spheres of their government, including local governments, to share in complementary duties to respect, protect and fulfil human rights.
The judge has ordered a local authority to pay £20,000 in damages each to a mother and her seven-year-old daughter for breaches under the Human Rights Act 1998 and Article 6 of the European Convention on Human Rights:

The local authority breached their rights under Article 8 ECHR ...

The local authority breached the rights of T and Mother under Article 6 ECHR in that they failed to issue proceedings in a timely manner.
Irene Grootboom vs. Govt. of South Africa, 2000

CONSTITUTIONAL COURT OF SOUTH AFRICA

THE GOVERNMENT OF THE REPUBLIC
OF SOUTH AFRICA

THE PREMIER OF THE PROVINCE OF THE
WESTERN CAPE

CAPE METROPOLITAN COUNCIL

OOSTENBERG MUNICIPALITY

versus

IRENE GROOTBOOM

AND OTHERS

Heard on: 11 May 2000

Decided on: 4 October 2000

Case CCT 11/00

First Appellant

Second Appellant

Third Appellant

Fourth Appellant

Respondents
Irene Grootboom vs. Govt. of South Africa, 2000

- The relevant international law can be a guide to interpretation but the weight to be attached to any particular principle or rule of international law will vary. However, where the relevant principle of international law binds South Africa, it may be directly applicable.

- Local governments have an important obligation to ensure that services are provided in a sustainable manner to the communities they govern.

- All spheres of government are intimately involved in housing delivery and the budget allocated by national government appears to be substantial.
Local Governments’ Obligation to Provide Protection for Refugees

ICRC’s definition of Protection:

“Protection aims to ensure that authorities and other actors respect their obligations and the rights of individuals in order to preserve the safety, physical integrity and dignity of those affected by armed conflict and other situations of violence.”

States have an obligation to provide protection to all their citizens, according to domestic legislations, such as constitutions. But also respect for all human beings is an international obligation erga omnes and no individual state can impose inhumane conditions and claim legality for its actions, when asylum seekers show at their borders.