

The Rights Stuff

Rethinking housing as a human right –
some implications for social housing

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1948 Universal Declaration of Human Rights

Article 25 (1):

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

1966 International Covenant on Economic, Social and Cultural Rights

Article 11(1):

“The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself (sic) and his family, including adequate food, clothing and housing... The States Parties will take appropriate steps to achieve the realisation of this right.”

Civil and Political vs Economic, Social and Cultural rights

Two key qualifying provisions in the case of ESC rights (in Article 2(1) of ICESCR):

- “progressive realisation”
- “to maximum of available resources”

Other international treaties and conventions recognising the human right to housing

- International Convention on the Elimination of all forms of Racial Discrimination (CERD, 1965)
- International Convention on the Elimination of all forms of Discrimination against Women (CEDAW, 1979)
- International Convention on the Rights of the Child (CRC, 1989)
- International Convention relating to the Status of Refugees (CSR, 1951)

Other international standards

Eg: General Comments of the UN Committee on Economic, Social and Cultural Rights:

- No. 4 (1991) on Adequate Housing - defined 7 requirements necessary for adequate housing
- No. 7 (1997) on Forced Evictions - defined 8 procedural protections which must be adhered to if evictions are not to constitute a human rights violation

The nature of obligations

The obligations of countries ratifying ICESCR can be understood as:

- an obligation to *respect* (ie. that States themselves not violate the right to housing - a negative requirement)
- an obligation to *protect* (ie. that States take steps to prevent third parties from violating the right)
- an obligation to *fulfil* (ie. that States take active steps to implement the right - a positive requirement)

In short...

- the human right to adequate housing is more than simply “shelter” - it means the right “to live somewhere in security, peace and dignity”
- as a human right it is provided without qualification - one does not have to be needy or poor or even a citizen to have the right (one simply has to be human)
- it is one of the most explicitly stated, detailed and widely ratified of all human rights
- there is a clear obligation under international law on almost all countries to implement the right under the terms of the ICESCR

Violations of the right to housing

Three principal forms of violation:

- people do not have housing (eg. homelessness)
- the housing people have is inadequate (according to the definition in General Comment No. 4)
- people are forced to leave their housing, whether adequate or otherwise (forced evictions)

In addition, violations of the right to housing occur in many conflict situations (eg. ethnic cleansing).

The scale of the problem

- according to the UN, over 1 billion people worldwide live in inadequate housing
- an estimated 100 million people around the globe are homeless on any given night
- over 50 million people worldwide have been driven from their homes as refugees or IDPs
- over 6.7 million people were forcibly evicted in 2001 and 2002, with a further 6.3 million living under threat of forced eviction in that period

Inadequate housing

- large proportion of the world's population lives in grossly inadequate housing (slums, favelas etc)
- residents often experience serious health problems as a direct result of physical housing conditions
- many are trapped in a cycle of poverty and cannot develop their full potential in economic and other terms
- poor habitability is only one of many concerns - residents will often have no security of tenure, no or little access to potable water, power and other services
- problem is generally seen as one of urban development, not as a human rights violation

Forced evictions

- unlike in Australia, often involve entire communities - many thousands of families - being forced out at very short notice
- the urban and rural poor in developing countries are frequently targeted by forced evictions
- violence and brutality are common during evictions
- the impact on victims can be devastating - loss of homes, livelihoods, accumulated wealth, access to education and health services, community ties etc
- many evictions are caused by development - often funded by the World Bank, IMF or regional agencies

In short...

- the right to housing is arguably one of the most widely violated of all human rights
- the gap between ratification of housing rights and their realisation is very broad in almost every country
- violations often result in extreme human suffering and misery - not simply lack of shelter
- significant improvements in realisation are unlikely to occur without activism to ensure governments have the necessary political will

Implementing housing rights

- does not mean governments must automatically provide every person with a house
- governments must adopt full realisation of the right as policy goal, and take concrete steps to achieve that goal
- many such steps require no or moderate expenditure by governments (eg. refraining from forced evictions, ensuring appropriate regulations in place etc)
- where expenditure is required, progressive implementation will spread the budgetary impact
- the world does not lack necessary resources to realise this human right - governments lack the political will

Australia's record

In general terms:

- failure to implement international treaty provisions, including ICESCR, in domestic law
- strong aversion to adopting the language of rights
- inadequate and declining funding despite strong economic growth and overall high level of wealth
- failure to recognise and rectify widespread and worsening violations of the right to housing

Australia's record

More specifically:

- 105,000 homeless people on night of last census
- more than 1/4 million in unaffordable housing
- neither social housing nor emergency shelter programs can cope with levels of demand
- private rental legislation does not meet international standards, particularly on security of tenure
- neither SAAP nor CSHA provide rights of access (only service user rights to those already in services)
- lack of a national housing strategy

The example of Scotland

- recently introduced a new Homelessness Act, which will eventually provide any homeless person with the right to be housed by local authorities
- phases out existing requirements that homeless people be in priority need and have a connection to local area
- described by Shelter UK as “the most progressive homelessness law in Europe”
- the Act allows for progressive implementation over a period of 10 years, spreading budgetary impact

The example of South Africa

- Post-apartheid Constitution provides explicit and extensive recognition of housing and related rights
- Housing White Papers have allowed the development of coordinated sets of laws, policies and programs, despite SA's comparative lack of resources
- The Constitutional Court oversees the government's progress in implementing the constitutional rights and recently ordered the government to devise and implement emergency housing measures

Implications for social housing

- fundamental ideological shift from welfare-based approach (providing housing or services on a qualified basis to the worthy, the needy, those deemed to be a priority) to a rights-based one (all people have a human right to adequate housing)
- of critical importance for people lacking adequate housing (clients, consumers, service users etc) and their relationship with state agencies and NGOs providing housing services
- responsibility for full realisation of the right rests with the Commonwealth, as State Party ratifying ICESCR

Implications for social housing

- lack of access to homelessness programs, funding cuts, reductions in security of tenure etc should be understood as human rights violations and opposed on this basis
- UN's human rights system provides limited scope for NGOs and individuals to act against governments for violations of the right to housing
- the lack of a regional human rights system in the Asia-Pacific region is an obstacle to acting on Australia's housing rights violations

In short...

- the time is right for a fundamental rethinking of housing policy in Australia, and particularly social housing policy, in terms of a rights-based approach
- only this way can governments be made to take full and appropriate responsibility for realising housing justice for all Australians
- only this way can those whose right to housing is being violated change from being welfare supplicants to legitimate holders of a universal right

About COHRE...

The Centre on Housing Rights and Evictions is an independent, international human rights NGO committed to ensuring the full enjoyment of the right to adequate housing for everyone, everywhere.

Established in 1994 and based in Geneva, COHRE now has regional programs around the world (including Asia-Pacific) as well as a range of thematic programs.

For more on COHRE visit our website: www.cohre.org.

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