

The Right to Adequate Housing: The Necessity of Security of Tenure

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Adequate housing is fundamental to survival and to living a dignified life with peace and security. Yet, it is currently estimated that approximately 100 million people worldwide are without a place to live, and that more than one billion people worldwide are inadequately housed. Throughout the world, millions more are forcibly evicted from their homes every year, or live with the uncertainty that they may be forcibly evicted at any time without any opportunity for relocation, compensation or legal recourse.

Despite the centrality of housing in everyone's life, few human rights are violated as frequently as are housing rights. In every country throughout the world - both North and South - women, men and children, particularly those living in poverty, are forced to live in appalling conditions, on pavements, near environmental hazards, in slums, parks, cars, cages, on rooftops, under bridges or are forced to "squat" in abandoned buildings or on land owned by others. For those fortunate enough to have a home, while these places may provide some meagre protection from the elements, they all too frequently remain grossly inadequate, lacking security of tenure, potable water, proper drainage and sewage systems, proper sanitation, ventilation/heat, electricity and access to basic social services.

There can be no doubt that housing rights are a major human rights concern in every corner of the world. While the international community has long recognised the right to adequate housing as a fundamental human right, and while there now exist several international instruments which set forth and protect housing rights, much work remains. The oft-cited gap between law and practice - which affects so many human rights - is sadly alive and well when it comes to housing rights. However, the marked disparity between the very positive international legal norms recognising housing as a human right, on the one hand, and the massive scale of housing deprivation throughout the world on the other, must not be viewed as inevitable nor as something which cannot be put right. Housing rights advocates all over the world, working at the grassroots, regional and international levels, working in partnership with local communities and national governments, are taking innovative steps to help secure the housing rights of the world's most vulnerable and marginalised peoples.

The right to adequate housing is enshrined in several international human rights instruments. Indeed, housing rights are not a new development within the human rights field, but rather have been long-regarded as essential to ensuring the well-being and dignity of the human person. Housing rights are integral to the whole of human rights in general, and have been included in the most authoritative international statements regarding human rights. The Universal Declaration of Human Rights (1948), for example, stipulates in its Article 25 that:

Everyone has the right to a standard of living adequate for the health and well-being of himself [herself] and of his [her] 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 [her] control.

In addition, the leading statement of international law relating to housing rights can be found in the International Covenant on Economic, Social and Cultural Rights (1966), which states in its Article 11(1):

The State parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself [herself] and for his [her] 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 realisation of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

Housing rights are also enshrined and protected within other international human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination (1965),⁵

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⁵ Article 5(e)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination states, "In compliance with the fundamental obligations laid down in Article 2 of this Convention, State Parties undertake to prohibit and eliminate racial

the Convention on the Elimination of All Forms of Discrimination Against Women (1979),⁶ the Convention on the Rights of the Child (1989),⁷ the Convention Relating to the Status of Refugees (1959),⁸ and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).⁹

The right to adequate housing has also been carefully defined by the Committee on Economic, Social and Cultural Rights (CESCR)¹⁰ in its General Comment No. 4 on the right to adequate housing, adopted unanimously in 1991. This is perhaps the most comprehensive international statement of law on the right to adequate housing to date, as it is meant to interpret and define the legal principles articulated in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights. Through this General Comment, the Committee puts forth the view that the right to adequate housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or with views defining shelter exclusively as a commodity.¹¹ Rather, the Committee notes that the right to adequate housing should be seen holistically, encompassing the right to live somewhere in security, peace and dignity. According to the Committee:

This is appropriate for at least two reasons. In the first place, the right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant [on Economic, Social and Cultural Rights] is premised. Thus "the inherent dignity of the human person" from which the rights in the Covenant are said to derive requires that the term "housing" be interpreted so as to take account of a variety of other considerations, most importantly that the right to housing should be ensured to all persons irrespective of income or access to economic resources. Secondly, the reference in Article 11(1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: "Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost."¹²

In its General Comment No. 4, the Committee goes on to note that the concept of "adequacy" is particularly significant in relation to the right to housing since it serves to "underline a number of factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute 'adequate housing' for the purposes of the Covenant [on Economic, Social and Cultural Rights]."¹³ In this regard, the Committee identified seven key criteria which comprise the right to adequate housing; namely, legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location and cultural adequacy.

With respect to security of tenure, General Comment No. 4 recognises that "tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property." In provides, however, that "notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats" and that "States Parties [to the Covenant on Economic, Social and Cultural Rights] should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households

discrimination in all of its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin to equality before the law, notably in the enjoyment of the following rights:...(e) in particular...(iii) the right to housing."

⁶ Article 14(2)(h) of the Convention on the Elimination of All Forms of Discrimination Against Women stipulates that, "State Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right...(h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications."

⁷ Article 27(3) of the Convention on the Rights of the Child states that, "State Parties in accordance with national conditions and within their means shall take appropriate measure to assist parents and others responsible for the child to implement this right and shall in the case of need provide material assistance and support programmes, particularly with regards to nutrition, clothing and housing."

⁸ Article 21 of the Convention Relating to the Status of Refugees specifically addresses the issue of housing and states that, "As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances."

⁹ This Convention has not yet entered into force. The full text is available on-line at: <http://www.unesco.org/human_rights/dcj.htm>.

¹⁰ This Committee is responsible for monitoring the fulfillment by States Parties of their obligations under the International Covenant on Economic, Social and Cultural Rights.

¹¹ United Nations Committee on Economic, Social and Cultural Rights, 13 December 1991, "General Comment 4: The Right to Adequate Housing (Art.11 (1))."

¹² Id.

¹³ Id.

currently lacking such protection, in genuine consultation with affected persons and groups.”¹⁴ General Comment No. 7 on forced evictions, unanimously adopted by the CESCR in 1997, further elaborates on security of tenure by articulating specific procedural requirements that must be adhered to prior to any eviction. These include pr¹⁵ovision of alternative land and housing, compensation for lost property, and fully consulting with the affected community throughout the entire process.

Secure tenure is essential to developing sustainable cities, human dignity and urban development, and is an essential element of housing rights, as it is fundamentally related to the long term security of one’s home. Indeed, the United Nations recognises this importance and has established the Global Campaign for Secure Tenure. The security derives from the fact that the right of access to and use of land or housing is underwritten by a known set of rules and that the right is justiciable. An individual or group, such as a family, can be said to have secure tenure when they are protected from involuntary removal from their land or residence, except in very exceptional circumstances, and then only by means of a known and agreed upon legal procedure that fully recognise human rights obligations. Importantly, the simple provision of security of tenure creates an environment in which dwellers enjoy housing security. Such security leads to investment in their own housing and communities and thereby creates better housing conditions. Therefore, one essential step towards the full enjoyment of housing rights is the immediate provision of legal security of tenure for everyone, everywhere.

¹⁴ United Nations Committee on Economic, Social and Cultural Rights, 13 December 1991, “General Comment 4: The Right to Adequate Housing (Art.11 (1)).”

¹⁵ For more information on the UN Global Campaign for Secure Tenure see <<http://www.unchs.org/campaigns/tenure/introduction.asp>>.