

Human Rights and Development: The Right to Housing

From Rhetoric to Practice

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As a human rights practitioner working in the area of housing rights and social and economic rights both in Canada and internationally, my greatest fear about the new attention being devoted to human rights and development is that the result will, in fact, not be the strengthening of the practice, protection and implementation of social and economic rights but rather, the further dilution of social and economic rights to the level of viscous rhetoric. Far too often, we hear the affirmation of the right to housing and other human rights from the U.N. and international agencies without the slightest indication of any commitment to, or understanding of what in fact it would mean to put a right such as the right to housing into practice.

It is easy to affirm that everyone believes in a right to housing. It may even be relatively easy, in the abstract, to achieve consensus that a development project which unjustifiably evicts people from their homes is a violation of the right to housing. But these types of affirmations of human rights values are not equivalent to implementing a human rights practice concomitant with development work, one which changes human rights from a list of values and principles to a practice which draws affected constituencies into the development process through the claiming of rights. Here, the responsibility lies in part with the human rights movement, and with human rights practitioners, who have frequently failed to put social and economic rights such as the right to housing into concrete human rights practice, or to have advocated for the institutional and other requirements for promoting and putting into effect such a practice.

We are now within 14 months of the year 2,000, by which the U.N.'s "Global Strategy for Shelter by the Year 2,000", initiated 12 years ago, was to have been realized. The Global Strategy took as its starting point that "adequate and secure shelter is a basic human right and is vital for the fulfilment of human aspirations". It aimed, in short, to ensure adequate housing for all as a human right by the year 2,000.

In fact, the years in which the Global Strategy was in place were defined, not by the realization

of the right to housing, but rather by dramatic and disturbing increases in homeless and violations of the right to housing worldwide. Particularly disturbing is that some of the more dramatic increases in homelessness have been experienced in countries enjoying robust economic development. We have been confronted, in the last decade, with the specter of economic development that instead of fulfilling the right to housing, quite clearly violates it.

The problem with the Global Strategy and similar affirmations of the right to housing at the domestic and international levels is that they often only invoke the right as a goal to which to aspire rather institutionalizing or even promoting a practice which will help us realize that goal. The Global Strategy presumed that as long as rights tell us what we want to achieve, we will all join up as partners to work together to achieve these universally shared values. It failed to recognize the act of claiming housing as a right by marginalized groups as an essential motor of change at the grassroots level, a necessary ingredient for the creation of the political will to solve the housing problem, as a crucial ingredient for properly identifying the barriers to realizing the right and the best solutions and as an essential mechanism for redressing power imbalances which lie behind violations of the right to housing.

If we are to come up with a human rights practice that moves beyond positing lovely goals with no practical means of achieving them, we must address two fundamental challenges. The first is to understand the human rights implications of the new paradigm of development that has been adopted by the developed countries and which is being promulgated worldwide as a global development strategy. We have talked in the last day about its premises - deregulation, reduction in the role of the state and neoliberal economics. And the second is to develop the type of human rights practice which would be able to actually modify this paradigm.

I want to briefly examine these two issues in the context of the right to housing, drawing from our experience in claiming this right in Canada. My basic point will be that the dominant paradigm of economic development globally is premised on the assault on both the substantive components of social and economic rights like the right to housing and on the legal and institutional mechanisms through which this right can be claimed and realized by affected constituencies. And my conclusion is that joining human rights and development requires that we move beyond the rhetoric of human rights as shared values and principles to develop effective human rights mechanisms, both domestic and international and provide resources to affected constituencies so that an effective human rights practice can emerge that is capable of

making disadvantaged constituencies key actors and challenging the prevailing paradigm of human rights and development.

Canada has been ranked at the top of the human development index for five years in a row. Several speakers have referred to this index as a measure of compliance with social and economic rights. It most certainly is not, as we will come to. But it is also true that Canada is known internationally as a promoter of human rights, including social and economic rights. Thus, I think it is fair to say that Canada epitomizes the model of development and human that this being promoted globally. It is a country in which lack of resources is not an issue - there is a clear ability to respect, protect and fulfill all human rights. The tensions between the dominant notion of development and human rights, on the one hand, and the real struggles for the realization of these rights, on the other, has become starkly evident in Canada. The assault on the protections of the right to housing in Canada have followed a pattern that is familiar worldwide as part of the new Agenda@ of economic development.

In the five years during which Canada has been perched at the top of the UNDP human development index, we have seen dramatic increases in homelessness, poverty and hunger in the midst of unprecedented prosperity. For the first time in a century, we have seen poverty levels increase during a time of strong economic growth. There are now probably well in excess of a quarter of a million homeless in Canada. Income disparity has increased. Food bank usage has doubled in some cities. Poverty among single mothers has increased to over 60%.

During these years of strong economic growth we have seen a concerted attack on all of the institutional mechanisms for the protection of the right to housing and to an adequate standard of living in Canada. In 1995, the Federal Government revoked the Canada Assistance Plan Act, which for a generation of Canadians had guaranteed the right to adequate financial assistance to provide for food, clothing, housing and other necessities as a kind of universal entitlement of citizenship. A person who was denied financial assistance for food, clothing and housing was guaranteed access to an independent appeal procedure of any such decision, had access to court to challenge systemically any provincial social assistance program which denied adequate assistance and was protected from being forced by the state to work against his or her will for basic necessities. All of these legal guarantees were revoked in 1995.

Welfare rates and entitlements have been dramatically reduced. In Ontario, the government

slashed welfare rates by 22% in 1995, forcing 100,000 households, mostly women and children, from their homes.

At the same time, the Federal Government eliminated any new social housing programs. Federal spending on housing in Canada has now been reduced to less than 1% of over-all expenditures - a phenomenally low amount by international standards.

Now this is not a development project which results in the violation of housing rights by bulldozing houses. It is in many ways, however, more sinister. It is an entire model of economic development premised on the deliberate and sustained assault on both the legislative and programmatic protections of social and economic rights like the right to housing which is happening not in one country, but globally.

It is important to clarify that this assault on the right to housing is not simply a result of fiscal restraint and deficit reduction. There is a common misconception that the right to housing is solely realized through government expenditure and direct provision of housing or of financial assistance. In fact, in a free market economy like Canada=s, where the majority of vulnerable groups rely on the private market to find housing, such rights rely at least as much on governments= obligation to protect this right by regulating the market or intervening in the market to protect vulnerable groups. It is through protective legislation that governments ensure that investors operate within the basic parameters of human rights protections.

The prevalent development model in Canada and throughout the world promotes the removal of the legislative protections and government interventions in markets that are required to protect the human rights of disadvantaged groups. In Canada we have seen the removal or weakening of some of the most fundamental legislative protections of the right to housing, such as rent control, landlord and tenant law, rental housing protection legislation and even human rights legislation protecting from discrimination in housing. Similar roll-backs have been occurring in many other countries. This abandonment of the protective role of government is not motivated by any consideration of fiscal restraint. In fact, governments are prepared to make unnecessary expenditures of money in order to promote a less regulated market.

Let me give one example of this. In Canada, discrimination against the poor in housing is very widespread, with most landlords preferring to rent to higher income applicants and refusing

social assistance recipients and other low income applicants. This discrimination costs governments millions of dollars by forcing social assistance recipients to rent more expensive apartments, therefore requiring higher shelter allowances, and forcing families into shelters for the homeless, at significant government cost.. Yet when a human rights claim taken forward by several women living in poverty appeared to be successful, the government of Ontario immediately moved to amend our human rights legislation so as to permit landlords to continue to discriminate against low income households. The government was prepared to spend millions of dollars to preserve the landlord=s freedom to discriminate contrary to international human rights law.

A fundamental aspect of the right to housing is the capacity of affected constituencies to participate in decision-making and to mobilize to claim the right to housing. Organizations such as my own in Canada and countless others have traditionally relied on government financial support to participate in housing development policies and to mobilize those who are denied access to housing to claim and enforce their rights. Virtually every organizations working on housing rights in Canada has had its government funding eliminated in the last five years. And private donors, while they are anxious to fund foodbanks, drop-ins, soup kitchens and sleeping bags for the homeless, are rarely willing to fund NGOs assisting the homeless to challenge the systemic causes of their homelessness from a rights perspective.

Poor people and civil society in Canada, as elsewhere, are mobilizing around social and economic rights and challenging these developments. The problem is that in social and economic rights claims, we must create the institutional mechanisms at the same time as we advance the claims. Canadian NGOs made submissions to the U.N. Committee on Economic, Social and Cultural Rights in 1993 suggesting a procedure for hearing oral submissions from NGOs during 5 year periodic reviews. A modified procedure was accepted and Canadian NGOs made submissions about many of the issues of homelessness and poverty in Canada. The U.N. Committee caused a significant stir in Canada and internationally by expressing concerns about the extent of homelessness, hunger and poverty in Canada and recommended specific legislative changes and increased social assistance rates to solve these problems. It was at that time unprecedented for so affluent a country to be criticized for violating social and economic rights.

Canada has completely ignored the Committee=s concerns however. Where the Committee recommended higher social assistance rates, rates have been slashed. Where they suggested

more social housing expenditure, all new social housing programs have been eliminated. Where they recommended improved enforcement of prohibitions of income discrimination in housing, the provisions themselves have been revoked. Where they suggested improved legislative protections of social and economic rights, the foundation of legal protections have been removed. And where they recommended that the judiciary provide effective remedies, the judiciary has declined to even consider the Covenant.

Poor people and homeless people have tried to use domestic human rights institutions as well. A family forced by homelessness to relinquish their children to foster care for a period of time until they could secure housing challenged the violation of their right to housing under human rights legislation. The claim was dismissed. Poor people challenged retrogressive measures such as the 22% cut to welfare in Ontario under our Charter's protection of the right to equality and security of the person, on the basis that it would force them into homelessness and hunger. The court ruled that there is no right to adequate financial assistance in Canada.

People suffering poverty and homelessness in one of the most affluent countries in the world, will not give up on claiming their right to housing and an adequate standard of living.. There is widespread mobilization around the right to housing and to an adequate standard of living in Canada as there is worldwide. Poor people are preparing to return to the U.N. Committee this year to document for the Committee the increasingly serious and unnecessary violations of their rights. We are continuing to go to courts and to human rights tribunals and advocating politically for improved institutional protections of social and economic rights. We see the claiming of social and economic rights as a long term struggle for a new paradigm of rights and new institutional protections of social and economic rights which, historically, arise with the advancing of the claim, not in advance of it. It is a struggle in which the constituencies whose rights have been violated must be recognized as the primary movers. As in other human rights struggles, we believe the institutional framework and the legal jurisprudence must evolve out of the claiming of the rights by those affected. What is needed is a complete revamping of all of institutions at both the domestic and the international level so that they support, rather than negate, a rights practice which is capable of claiming and realizing a right to housing.

So what can we learn in general about the right to housing from the country at the top of the UNDP human development index? There are a few lessons which I think are of significance internationally.:

- 1) We need to dispense with the myth that economic development, in and of itself, progressively realizes the right to housing and other social and economic rights.
- 2) We need to emphasize that the right to housing does not simply require the allocation of resources to the provision of housing but is equally reliant on protective legislation and government intervention to regulate the market so as to ensure that vulnerable groups are not excluded.
- 3) We need institutional and legislative mechanisms through which the right can be claimed and through which vulnerable groups can identify and remove the barriers they face in trying to secure housing.
- 4) We need clarification from the Human Rights Committee and other Treaty Monitoring Bodies that even in countries whose constitutions do not contain an explicit reference to the right to housing, such a right is implicit in other rights, such as guarantees of security of the person, dignity, liberty and equality, and is therefore a right which can be claimed in any country which recognizes even civil and political rights.
- 5) We need to ensure that states are held responsible for ensuring that the most vulnerable groups have full access to any rights claiming processes, including the courts and that adequate resources are made available to community based organizations which can claim the right to housing.
- 6) We need better education of lawyers and judges in social and economic rights.

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- 7) We need more support from the human rights movement as a whole so that violations of the right to housing in countries such as Canada and the U.S. are universally condemned as a violation of human rights.

It is impossible for donor countries to promote the implementation of human rights mechanisms and institutions to enable poor people in developing countries to challenge violations of social

and economic rights when they are systematically dismantling such mechanisms at home. Poor people in affluent and developing countries alike have an essential role to play in the redefinition of human development through an effective human rights practice. But their practice needs the support of funders, agencies and of human rights organizations which have for too long left this voice out of the human rights movement.