

THE HOUSING RIGHTS OF CHILDREN

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Introduction

Every child deserves a safe place to call home. Yet, in all parts of the world, hundreds of millions of children of all ages come home every day to a house in such appalling conditions that it threatens their very health and well being. Worse yet, millions more children have no place to come home to at all. In major cities all over the world, housing poverty forces children to eke out the most meagre of possible existences on dangerous streets.

Inevitably, in all parts of the world, children are those who are most affected by violations of housing rights. Today, there are estimated to be some 150 million street children worldwide, ranging in age from three to eighteen years old.¹ About 40% of these children are actually homeless, often living alone without anyone to look after them.² Homeless children are forced into a precarious existence on the streets. This not only violates their right to adequate housing, but also threatens their right to personal security, their right to education, their right to the highest attainable stan-

dard of health, their right to freedom from exploitation, and – in far too many cases – even their right to life.

These figures, although staggering, do not include the millions of other children throughout the world who may not be homeless but nonetheless face other violations of their housing rights. In its State of the World's Children 2005 report, the United Nations Children's Fund (UNICEF) revealed that more than one out of every three children in the developing world – approximately 640 million children – do not live in adequate housing.³ One in five – approximately 400 million children – do not have access to safe drinking water.⁴

In fact, protecting children's housing rights is a pressing concern in all parts of the world – whether in the North or the South. If their housing rights are not protected, children suffer horrific consequences, of which the following are just illustrative examples. In Zambia, thousands of children have been orphaned by the HIV/AIDS pandemic; with nowhere to go, they line the streets of the capital, Lusaka, every

evening.⁵ In Guatemala, hundreds of street children and homeless children have been murdered by armed vigilante groups with “social cleansing” on their ruthless agenda.⁶ In the USA, poor children living in inadequate inner city housing are more likely to miss school and to develop chronic health conditions such as asthma in an allergic reaction to the excrement of cockroaches, mice and other vermin.⁷ In the United Kingdom, one in twelve children will develop diseases such as bronchitis, tuberculosis or asthma because of inadequate housing.⁸ In India, some 18 million children are “pavement dwellers,” living out their childhood on the streets of major cities.⁹ Roma children in European countries including Bulgaria, the Czech Republic, Greece, Italy and Poland live in substandard housing and face violence during forced eviction at the hands of state officials and racist groups.¹⁰

These examples highlight the broad scope of housing rights violations that children suffer – violations that, unfortunately, are not unique and not limited to any particular region of the world. Indeed, violations of children’s housing rights are often at the root of childhood vulnerability and exposure to violence.

Every child’s right to adequate housing

In May 2002, more than 7,000 people participated in the most important international conference on children in more than a decade, the Special Session of the United Nations General Assembly on Children. There, the nations of the world committed themselves to striving for a series of goals to improve the situation for children and young people. Following the Special Session, the United Nations General Assembly adopted resolution S 27/2, calling upon all members of society to join a global movement that

would “help to build a world fit for children.” Protecting the housing rights of children is an essential element of this vision, a necessary step towards ensuring that children are able to enjoy all their human rights in safety, security and dignity. If we can resolve the present crisis of children’s housing rights, we can indeed go far in creating a world fit for children.

Today, Children’s human rights are well protected under international human rights law and related standards. These standards recognize that all children have a right to adequate housing. For example, the United Nations Declaration on the Rights of the Child, which was adopted in 1959, proclaims in Principle 4 that:

The child shall have the right to adequate nutrition, housing, recreation and medical services.¹¹

The Declaration also stipulates in Principle 2 that:

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him [or her] to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.¹²

The principle of “the best interests of the child” is a critical one for policy makers and advocates to remember when it comes to issues of children’s housing rights and the improvement of human settlements around the world. This principle has been central to the development of children’s human rights under international law, and was incorporated prominently into the most well known and widely accepted interna-

tional human rights legal instrument, the United Nations Convention on the Rights of the Child.

The Convention has been ratified by an unparalleled number of countries – 192 of them – and is the “most universally accepted human rights instrument in history.”¹³ Only two countries, Somalia and the US, have yet to ratify the Convention.¹⁴ This unprecedented level of international commitment is truly extraordinary and points to the willingness of most every country in the world to legally commit itself to safeguarding the human rights of children.

Article 27 of the Convention clearly protects the housing rights of children and states that:

1. States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

The Convention on the Rights of the Child is an extremely useful standard when it comes to advocating for children’s housing rights, including their universality and their indivisibility from other rights. Indeed, the United Nations Committee on the Rights of the Child, the expert body that monitors implementation of the Convention, has recognized that:

“In the light of the pervasiveness of the phenomenon of homelessness and inadequate housing, which occurs in all parts of the world

and affects developing as well as developed countries, the Committee deems it important to emphasise the universal character of the right to housing. It applies to every child, without restriction or distinction of any kind ...”¹⁵

In addition to the Convention on the Rights of the Child, other international standards exist for the protection of children’s housing rights. For example, perhaps the leading statement of international law relating to housing rights is the International Covenant on Economic, Social and Cultural Rights, and has been best defined by the UN Committee on Economic, Social and Cultural Rights. That Committee has noted that: “... the right to 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 views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.”¹⁶

The Committee on Economic, Social and Cultural Rights has itself identified seven key elements that comprise the right to adequate housing. From the perspective of children’s housing rights, each of these elements has special significance.

___ Legal security of tenure protects children against the trauma of forced eviction¹⁷ and displacement.

___ Availability of services, materials, facilities and infrastructure ensures that children have access to safe drinking water and sanitation facilities, vastly increasing their chances of surviving infancy and early childhood.

___ Affordability ensures that children have access to an adequate home regardless of how poor their families may be, and that their rights to health, education and food are not jeop-

ardised because family resources are drained by exorbitant housing costs.

___ Habitability protects children's physical and psychological health from environmental threats, including those associated with overcrowded and/or poorly constructed housing.

___ Accessibility ensures that vulnerable children, including the displaced, are adequately housed, regardless of their and their family's circumstances.

___ An adequate location ensures that children are close enough to social facilities that enable them to realise their rights to health and education. It also protects children from pollution that may put their development and survival at risk.

___ Finally, upholding cultural adequacy allows children to express their cultural identity through their housing. In order for children's housing rights to be upheld, each of these seven elements of the right to adequate housing must be fully ensured.

Children's housing rights are also protected by various regional human rights systems, including those of Africa, Europe and the Americas. Each of these regional systems incorporates regional human rights treaties along with commissions and/or courts that oversee State Party compliance with the relevant treaties. Furthermore, each of these systems embodies multiple provisions on, or related to, the right to adequate housing, as well as rich jurisprudence that is relevant to that right.

The obligations of states to uphold children's housing rights

International human rights standards are far more than mere political statements: They im-

ply concrete legal obligations. Under international human rights law, States have duties and obligations to respect, protect and fulfil children's housing rights.

___ The obligation to respect the right of children to adequate housing entails that states should refrain from any action that would prevent children and their families from realizing this right whenever they themselves are able to do so. This means that states must not act in ways that would worsen, or lead to a further deterioration of, the housing rights situation for children. A key implication of this duty is that states are prohibited from forcibly evicting children and their families and from arbitrarily and unlawfully destroying their homes. Importantly, under international human rights law the obligation to respect is an immediate obligation of states and is not subject to progressive realization over time.

___ The obligation to protect the right of children to adequate housing requires that states effectively prevent violations of that right by non-state players, such as landlords, corporations or other private sector individuals or bodies. In all parts of the world, non-state players are responsible for forcibly evicting families, including children. Non-state players also make access to housing and basic services unaffordable and/or contribute to the inhabitability of housing, for example, by unjustifiably increasing rents or water and sanitation charges, and/or by neglecting to maintain housing and allowing it to fall into disrepair. In order to fully comply with their obligation to protect, states should act at all times to defend children and their families against housing discrimination, harassment, withdrawal of services and other threats from private sector players. Like the ob-

ligation to respect, the obligation to protect is an immediate obligation and not subject to progressive realization over time.

— The obligation to fulfil the right of children to adequate housing entails certain positive obligations, and may require public expenditure in respect of appropriate budgetary commitments, state regulation, provision of public services, and provision of housing subsidies or social housing, including housing programs that are sensitive to children's special needs. International law requires that states should immediately take steps in this regard, using the maximum available resources to progressively realize children housing rights – without discrimination on any grounds. Even when states have only limited resources, they are obligated to take immediate steps to guarantee the right of children to adequate housing. Many such steps, which are by definition initial in nature, do not necessitate the allocation of funding per se, but at least the creation of plans and strategies aimed at fulfilling this right.

Nevertheless, it is clear that an enormous amount of work remains to be done to ensure the states comply with their international human rights obligations. All too often, violations of children's housing rights are allowed to take place with impunity, as states neglect their international human rights obligations and turn a blind eye to the suffering and distress of children.

The Housing Rights of Children

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(COHRE) is an independent, international human rights organisation which promotes practical legal and other solutions to endemic problems of homelessness, inadequate housing and living conditions, forced evictions and other violations of economic, social and cultural rights throughout the world. To this end, COHRE promotes the creative use and application of international human rights law. This article represents a summary of COHRE's Report "Defending the Housing Rights of Children." The report is available online at: www.cohre.org.

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