

The Right to Housing, Under International Human Rights Law

Do Canadians Have a Right to Adequate Housing?

Not everyone may realize that governments in Canada are obligated to ensure that everyone has adequate housing. However, Canada is a signatory to international human rights treaties that oblige governments to address conditions of poverty, and to ensure that everyone has an adequate standard of living, including adequate housing.

The central human rights treaty concerning the right to housing is the International Covenant on Economic, Social and Cultural Rights, which is known as the “ICESCR.”¹ Canada ratified the ICESCR in 1976.

Article 11 of the ICESCR commits governments in Canada to take positive steps to ensure that everyone has an adequate standard of living, including adequate food, clothing, and housing.

Has the Right to Adequate Housing Under International Human Rights Law Been Interpreted?

In 1991, the UN Committee on Economic, Social and Cultural Rights adopted ‘General Comment No. 4 on the Right to Adequate Housing.’ General Comment No. 4 is an authoritative legal interpretation of the right to housing under international law.

Is the Right to Adequate Housing Limited to Emergency Shelter?

The right to adequate housing is not restricted to emergency shelter. In General Comment No. 4, the Committee explained 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...Rather it should be seen as the right to live somewhere in security, peace and dignity.”

Further, states General Comment No. 4, the right to housing is not just a right to any housing, but to adequate housing.

What is Meant by Adequate Housing?

The term adequate means housing that offers: security of tenure; availability of services; affordability; habitability; accessibility; location; and, cultural adequacy.

The requirement of affordability can be particularly important to low income people. General Comment No. 4 states:

Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs...²

Does the Right to Housing Include More than Bricks and Mortar?

Yes. General Comment No. 4 explains that housing rights involve more than the bricks and mortar that go into the physical structure referred to as a home. Rather, explains General Comment No. 4, it must be recognized that housing cannot be viewed in isolation from rights of community-based groups and tenants to freedom of expression, and association, and to the right to participate in public decision-making.

This recognition is important when assessing the weight that should be accorded to the right of homeless people and other concerned citizens to stage and maintain a peaceful protest against government measures and decision-making processes that fail to take account of people's needs for adequate housing.

General Comment No. 4 states:

the right to adequate housing cannot be viewed in isolation from other human rights... the full enjoyment of other rights – such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups)...and the right to participate in public decision-making – is indispensable if the right to adequate housing is to be realized and maintained by all groups in society.³

Does the Right to Adequate Housing Require Governments to Take Positive Measures?

Yes. Article 2 (1) of the Covenant obligates governments to progressively realize the right to adequate housing, using the maximum of available resources. This means that governments must take positive, deliberate, concrete steps to fulfill the right to adequate housing.

Moreover, deliberate government backsliding on the right to an adequate standard of living is a violation of the ICESCR.⁴

What are the Ways of Enforcing the Right to Adequate Housing?

Internationally, Canada is required to make periodic reports to the ICESCR Committee, and the Committee is empowered to question Canada and to comment publicly on its performance. Canada reported in 1998, and is expected to report again in the year 2003.

Social and economic rights are also potentially enforceable in Canadian courts through the Canadian Charter of Rights and Freedoms, which the Supreme Court of Canada has declared must be interpreted in light of Canada's international human rights treaty obligations.

Has Canada Been Criticized by the United Nations for its Track Record on the Right to Housing?

During the past decade governments in Canada have been harshly criticized by UN treaty bodies for making legislative choices that have the effect of exacerbating poverty, and diminishing the rights of Canadians to an adequate standard of living, including adequate housing.

For example, in 1998 the CESCR Committee expressed grave concern "that such a wealthy country as Canada has allowed the problem of homelessness and inadequate housing to grow to such proportions that the mayors of Canada's 10 largest cities have now declared homelessness a national disaster." It also noted that "provincial social assistance rates and other income assistance measures have clearly not been adequate to cover rental costs of the poor."⁵

The Committee issued strong and precise recommendations to Canada with respect to homelessness and the right to adequate housing, including that:

the federal, provincial and territorial governments address homelessness and inadequate housing as a national emergency by reinstating or increasing, as the case may be, social housing programmes for those in need, improving and properly enforcing anti-discrimination legislation in the field of housing, increasing shelter allowances and social assistance rates to realistic levels, providing adequate support services for persons with disabilities, improving protection of security of tenure for tenants and improving protection of affordable rental housing stock from conversion to other uses.

In addition, Canada was urged to implement a national strategy for the reduction of homelessness and poverty.

About the Poverty and Human Rights Project

This law sheet was produced by The Poverty and Human Rights Project, in Vancouver B.C., on October 24, 2002. The Poverty and Human Rights Project is a non-profit research and public education centre committed to promoting recognition and realization of rights to social and economic security. The Project Directors are Gwen Brodsky and Shelagh Day. For more information about the Poverty and Human Rights Project, contact PHRP@telus.net

END NOTES

- 1 *International Covenant on Economic, Social and Cultural Rights*, GA Res. 2200A (XXI), 21 UN GAOR, (Supp. No. 16), UN Doc., A/6316 (1966), 993 U.N.T.S. 3, Can. T.S. 1976 No. 46.
- 2 CESCR, *General Comment 4, The Right to Adequate Housing (Art. 11 (1) of the Covenant)* (Sixth session, 1991), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 53 (1994), para 8 (c).
- 3 *Ibid.*, para 9.
- 4 See also: *General Comment 3, The Nature of States Parties Obligations, Art.2 para. 1 of the Covenant*, 5th Session, 1990, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 45, (1994), paras 24, 25.
- 5 CESCR, *Concluding Observations on Canada*, UN Doc. E/C.12/1/Add.31, 10 December 1998, at paragraphs 24, 25. See also: CESCR, *Concluding Observations on Canada*, UN Doc. E/C. 12/1993/5, 15 June, 1993.