

THE RIGHT TO PARTICIPATE: THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK

Participatory Rights and the Right to an Adequate Standard of Living

*The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among the UN Agencies [Common Understanding]*¹ was adopted by UN development agencies in 2003. It affirmed that rights-based programming recognizes stakeholders as “key actors” and participation as both a means and a goal – empowering marginalized and disadvantaged groups, promoting local initiatives, adopting measurable goals and targets, developing “strategic partnerships” and supporting “accountability to all stakeholders.”²

The OHCHR further elaborated the rights-based approach in its 2004 publication *Human Rights and Poverty Reduction: A Conceptual Framework*³ and in its 2006 publication: *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies (Guidelines)*.⁴ The latter document was intended to “provide policymakers and practitioners involved in the design and implementation of poverty reduction strategies with guidelines for the adoption of a human rights approach to poverty reduction.”⁵ As noted in the introduction to the *Guidelines*, “the adoption of a poverty reduction strategy is not just desirable but obligatory for States which have ratified international human rights instruments.”⁶ The *Guidelines* set out the basic human rights approach as follows:

The essential idea underlying the adoption of a human rights approach to poverty reduction is that policies and institutions for poverty reduction should be based explicitly on the norms and values set out in international human rights law. Whether explicit or implicit, norms and values shape policies and institutions. The human rights approach offers an explicit normative framework—that of international human rights. Underpinned by universally recognized moral values and reinforced by legal obligations, international human rights provide a compelling normative framework for the formulation of national and international policies, including poverty reduction strategies.⁷

The *Guidelines* emphasize that the premise behind the rights-based approach is that it is essential to challenge the imbalance of power and the denial of rights that lies behind poverty. It explains that it “is now widely recognized, [that] effective poverty reduction is not possible without the empowerment of the poor. The human rights approach to poverty reduction is essentially about such empowerment.”⁸ The United Nations High Commissioner for Human Rights has described the role of empowerment in the following terms:

36. Empowerment is a broad concept, but I use it in two distinct senses. Experience from many countries teaches us that human rights are most readily respect, protected and

fulfilled when people are empowered to assert and claim their rights. Our work, therefore, should empower rights holders.

37. Additionally, successful strategies to protect human rights depend on a favourable government response to claims that are advanced. Empowerment is also about equipping those with a responsibility to implement human rights with the means to do so.⁹

The *Guidelines* recommend that poverty reduction strategies include four categories of accountability mechanisms: judicial, quasi-judicial, administrative, and political.¹⁰ The *Guidelines* propose that “innovative and non-formal monitoring” tools should be developed¹¹ and that all monitoring and evaluation mechanisms should be developed “in close collaboration with people living in poverty.”¹² The *Guidelines* recommend that civil society organizations and other rights-holders should also have a role in monitoring poverty and housing strategies to ensure that governments are held to account for failures (or successes) and to best identify areas that may need increased attention and resources.¹³

In a joint report on health and poverty reduction, the WHO and the OHCHR described the importance of participatory rights and rights-based accountability:

Some processes of accountability are specific to human rights, for example inquiries by national human rights institutions and reporting to the UN human rights treaty-monitoring bodies. Others are general, including administrative systems for monitoring service provision, fair elections, a free press, parliamentary commissions and civil society monitoring. The principle of accountability requires that PRS [Poverty Reduction Strategy] processes of design, implementation and monitoring should be transparent and decision makers should answer for policy process and choices. In order to achieve this, the PRS should build on, and strengthen links to, those institutions and processes that enable people who are excluded to hold policymakers to account.¹⁴

The WHO and the OHCHR emphasize that indicators of progress in poverty reduction should also measure adherence to human rights standards and principles, including non-discrimination, participation, accountability and transparency.¹⁵

In its *General Comment on the Right to Social Security*, the UN Committee on Economic, Social and Cultural Rights affirmed that: “The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to social security should be an integral part of any policy, programme or strategy concerning social security.”¹⁶

Participatory Rights and the Right to Housing

General Comment No. 4, adopted by the CESCR in 1991, elaborated on State parties' obligation to achieve the full realization of the right to adequate housing (Article 11 of the *ICESCR*).¹⁷ In the development of strategies and programs to fulfill the right to housing, States are also required to consult extensively with, and to encourage the participation of, groups who are affected by inadequate housing.¹⁸ Legal remedies must be available to groups facing evictions, inadequate housing conditions, or discrimination in access to housing.¹⁹

Adopted in 1997, *General Comment No. 7* clarified obligations with respect to evictions.²⁰ The Committee stated that the following procedural protections must be afforded in all evictions:

- a) an opportunity for genuine consultation with those affected;
- b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
- d) especially where groups of people are involved, government officials or their representatives to be present during an eviction;
- e) all persons carrying out the eviction to be properly identified;
- f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
- g) provision of legal remedies; and
- h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

Of particular relevance to Ontario is the principle that where evictions cannot be avoided, they "should not result in individuals being rendered homeless or vulnerable to the violation of other human rights." States are obliged to "take all appropriate measures...to ensure that adequate alternative housing...is available."²¹ In the CESCR's last review of Canada in 2006, it "strongly" recommended that "the State party take appropriate measures, legislative or otherwise, to ensure that those affected by forced evictions are provided with alternative accommodation and thus do not face homelessness, in line with the Committee's general comment No. 7 (1997)."²²

In response to concerns raised by the Human Rights Committee about positive measures required to address the problem of homelessness in order to protect the right to life under article 6 of the ICCPR, the Government of Ontario responded in its [Periodic Report](#) by referring to the exercise of discretion by the Ontario rental housing tribunal in order to avoid such outcomes. Significantly, this was reported in relation to compliance with the right to life:

377. The *Tenant Protection Act, 1996*, governs landlord and tenant matters in Ontario. The Act contains a legislative clause that an adjudicator of the Ontario Rental Housing Tribunal may use discretion in ordering termination of a tenancy if there is a compassionate or other reason to retain the tenancy. Adjudicators often use this clause

when the only alternative is to create a homeless situation and there may be other remedies available for the landlord, i.e., mediation, establishment of a payment plan, etc.

¹ United Nations, *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among the UN Agencies* (2003). Adopted by the UN Development Group in 2003. [United Nations, *Common Understanding*]

² *Ibid* at 3.

³ United Nations Office of the High Commissioner for Human Rights, *Human Rights and Poverty Reduction: A Conceptual Framework*, UN Doc HR/PUB/04/1 (Geneva: OHCHR, 2004) [OHCHR, *Conceptual*].

⁴ United Nations Office of the High Commissioner for Human Rights, *Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies*, UN Doc HR/PUB/06/12 (Geneva: OHCHR, 2006) [OHCHR, *Guidelines*].

⁵ *Ibid* at 2.

⁶ *Ibid* at 19.

⁷ *Ibid* at para 16.

⁸ *Ibid* at para 18. See also World Health Organization, Commission on Social Determinants of Health, *Closing the Gap in a Generation: Health Equity through Action on the Social Determinants of Health* (Geneva: World Health Organization, 2008) at 155 for definition of empowerment. CSDH has described empowerment as “changing the distribution of power within society and global regions, especially in favour of disenfranchised groups and nations.” It “requires strengthening the fairness by which all groups in a society are included or represented in decision-making about how society operates,” in particular, it “depends on social structures, supported by the government, that mandate and ensure the rights of groups to be heard to presented themselves – through, for example, legislation and institutional capacity – and on specific programmes supported by those structures, through which active participation can be realized.”

⁹ United Nations High Commissioner for Human Rights, *The OHCHR Plan of Action: Protection and Empowerment* (Geneva: OHCHR, 2005) at paras 36-37.

¹⁰ OHCHR, *Guidelines*, *supra* note 4 at para 77.

¹¹ *Ibid* at para 79.

¹² *Ibid* at para 79.

¹³ *Ibid* at para 75; para 86.

¹⁴ United Nations Office of the High Commissioner for Human Rights & World Health Organization, *Human Rights, Health and Poverty Reduction Strategies*, UN Doc HR/PUB/08/0 (Geneva: OHCHR, WHO, 2008) [OHCHR & WHO] at 8.

¹⁵ *Ibid* at 59.

¹⁶ United Nations Committee on Economic, Social and Cultural Rights, *General Comment 19: The Right to Social Security (art. 9)* UNCESCROR, 39th Sess UN Doc E/C.12/GC/19 (2008) para 69.

¹⁷ United Nations Committee on Economic, Social and Cultural Rights, *General Comment 4: The Right to Adequate Housing (art 11(1) of the Covenant)*, UNCESCROR, 6th Sess, UN Doc E/1992/23, (1991) [*General Comment 4*].

¹⁸ *Ibid*.

¹⁹ *Ibid* at para 17.

²⁰ United Nations Committee on Economic, Social and Cultural Rights, *General Comment 7: The Right to Adequate Housing: Forced Evictions (art 11(1) of the Covenant)*, UNCESCROR, 16th Sess, UN Doc E/1998/22, annex IV (1997).

²¹ *Ibid* at para 16.

²² United Nations Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada*, UNCESCROR, 36th Sess, UN Doc E/C.12/CAN/CO/4 & E/C.12/CAN/CO/5, (2006) at para 63 [*Concluding Observations 2006*].