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Barcelona Societat

Journal on social knowledge and analysis



Ajuntament
de Barcelona

December 2016

Key words: homelessness, human rights, society, poverty, speculation

Homelessness: A Human Rights Crisis

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Homelessness is a global human rights crisis that demands an urgent response. It is occurring in all socio-economic contexts – in developed, emerging and developing economies, in prosperity as well as in austerity – and it is occurring with impunity.

Describing not only a lack of housing but also a social group, the term homelessness can be problematic as it attempts to couch various understandings of a phenomenon under one umbrella. The common thread that unites people who are homeless is the denial of rights and indignation individuals experience on a daily basis. Misunderstood worldwide as a mere policy issue or social ill, homelessness is a red flag that states have failed to protect the human rights of the most vulnerable in society.

Homelessness is one of the least examined consequences of unabated inequality, unfair distribution of land and property, and poverty occurring on a global scale. It is a result of State acquiescence to real estate speculation and unregulated markets – a result of treating housing as a commodity rather than as a human right. It is rooted in a global privileging of wealth and power, scapegoating and scorn for those who do not have a home.

As a human rights violation, to adequately address homelessness requires human rights responses that tackle the systemic causes of homelessness, as well as changing societal attitudes and structures to ensure it is eradicated.

A worldwide crisis is occurring right in front of our eyes and yet remains largely invisible. Homelessness, a phenomena that no country is immune to, has many faces and nuances, but is bound by common struggles for dignity and the recognition of human rights.

The world is consistently exposed to the realities of homelessness:

In the west coast of Canada, a tent city is erected where people are essentially living under tarps, without any basic services, in make-shift structures teeming with insects.

Wedged between new buildings and older structures that overcharge for appalling housing conditions, the homeless people in this camp are just some of many in the country, with a simple request: provide us with real affordable housing options.

In major cities of India people are consistently confronted with stark inequalities standing side by side: new construction promising a luxurious lifestyle complemented by high-end furnishings and a sense of an elevated social status abutting some of the largest slums in the world where access to

water and sanitation can only be imagined, and families live without a sense of security or hope of ownership.

In Europe the numerous stories and images of the migrant crisis illustrate lives put on hold, families fleeing conflict, and the desire for a better life. Millions remain un-housed throughout various countries, desperate for their opportunity to re-join society and move forward.

A woman in Rio de Janeiro, Brazil, now travels long-distances to take her child to school, her former community just a memory since it was demolished to make way for the Olympic games. She and her family are now forced to the outskirts of town, removed from social networks, schools and employment.

In my view as Special Rapporteur, homelessness, in its many forms, is symptomatic of governments' failure to address growing inequalities in income, wealth and access to land and property. Simply put, it is governments' failure to implement the right to housing.

What do we mean by “homelessness”?

In English, 'homelessness' suggests both a lack of physical housing and a loss of a sense of social belonging. In some other languages, the closest word to homelessness would be 'rooflessness', lacking shelter or transience. In French, homelessness is referred to as either 'sans domicile fixe', or 'sans-abrisme'. In Spanish, homelessness is referred to as 'sin hogar' or 'sin techo' or 'en situación de calle' or 'poblaciones callejeras' o 'sinhogarismo'.

Defining people who are homeless simply by their lack of shelter limits the understanding of a much broader issue. Terms like “sleeping rough” or street homelessness reference a small portion of the homeless population, the majority of which are men. This can lead to distorted policy solutions and under-estimating the problem, such as in Japan. When homelessness was defined in terms of those living on the street available data suggested declining numbers as a result of shelter programs. However, when defined as “lacking access to minimally adequate housing” data showed increasing numbers of homeless. It also fails to capture the depth of the discrimination and exclusion many homeless people face daily in their struggle for dignity.

Narrow definitions can also exclude entire populations. Consider rural Bangladesh, for example, where homelessness is assessed based on whether a household has a regularised plot of land as well a roof overhead.¹ Other definitions focus on being deprived of a certain minimum quality of housing where individuals in precarious or overcrowded housing may consider themselves to be homeless as they lack a secure place to call their own.

In my work and in my report on this issue, I have chosen a human rights definition of homelessness, which provides both a flexible and contextual approach. It recognizes that homelessness is related to personal circumstances, but it also recognizes the structural causes of homelessness. This approach is anchored in three central elements:

1. The absence of home – both in terms of the material and the social aspect housing.
2. Systemic discrimination - “the homeless” is constituted as a social group subject to discrimination and stigmatization.
3. Recognition of homeless people as rights-holders and the broader systems that deny these rights.

¹ Graham Tipple and Suzanne Speak, “Definitions of homelessness in developing countries” (2005) 29 *Habitat International* 337 at 342.

A Human Rights Framework

Homelessness is a violation of human rights and as such, requires a human rights response.

Under international law state obligations have been clearly laid out. For example, the Committee on Economic, Social and Cultural Rights (CESCR), the UN body tasked with monitoring States' human rights compliance with the right to housing, has said: a State party in which any significant number of individuals are "deprived of [...] basic shelter and housing" is, "prima facie, failing to discharge its obligations under the Covenant."² States are required to "demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations."³

International law makes it clear: states have human rights responsibilities that must be fulfilled immediately. Addressing homelessness is one such responsibility.

Immediate obligations with respect to homelessness include adopting and implementing comprehensive strategies to address homelessness that are based in human rights. These must point to goals and timelines as well as outline the responsibilities of all levels of government. Most importantly, such a strategy should be developed, implemented and evaluated by people who are experiencing homelessness – a critical tenet of a human rights framework.

Measuring the extent of homelessness and reporting on outcomes will help to ensure accountability and must be included in any strategy. However, numbers only tell one side of the story. Testimonials and visuals would complement the statistics gathered and offer a sense of the human element of homelessness as well as the circumstances which lead to this experience. It would bring a tangible component to policy: pictures and stories that describe the unspeakable conditions where people are housed, their fear of eviction, or their heartache as they are called 'vermin' or 'cockroaches'. Civil society organizations can help to gather such content which will offer a more fulsome understanding of the issue.

A human rights approach places people, and particularly the most vulnerable, at the centre. It is a recognition that 'the homeless' are individuals – rights bearers - and will set the stage for all state activities with regards to homelessness. This forces a shift whereby all decisions are viewed from the perspective of how they will interact with the rights of individuals, and the goal of eliminating homelessness.

Under this framework combating discrimination is a top priority. It is imperative that states policies, laws and programs are in line with international obligations, and do not re-enforce negative stereotyping. In terms of forced evictions, states must prohibit any eviction that would lead to homelessness and follow a process of consultation as well offering adequate resettlement options. No excuses.

Developers and urban planning would have to ensure human rights are not violated. States have a firm legal obligation to regulate and engage with companies, or individuals to ensure that all of their actions and policies are in accordance with the right to adequate housing and the prevention and amelioration of homelessness. Real estate speculation, urban development and investment cannot trump human rights.

Homeless People: Stigmatized, Discriminated, Excluded, Criminalized

Homeless people have been constructed as a social group. Worldwide their identity is created and then reinforced by people who have more: more money, more power, more influence. It is a vicious

² Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States Parties' obligations, para 10□

³ Ibid□

circle. Laws, policies, business practices, and media stories depict and treat homeless people as 'morally inferior', undeserving of assistance, authors of their own misfortune, blamed for the social problems they come to represent. Once stigmatized, their needs are further neglected and inequality and discrimination further entrenched.

I have received countless testimonies from homeless people of the constant intimidation and harassment by authorities and the general public; they are denied access to basic services or places to shower, urinate and defecate; they are rounded up and forced out of cities, and relocated to uninhabitable places; they are walked over, and passed by; they are subject to extreme forms of violence including hate crimes and sexual violence; and are often the subject of vilification. At the same time, some forms of homelessness remain totally invisible and neglected, in particular in parts of the global south where it remains relatively unacknowledged or where the distinction between very precarious housing conditions and homelessness may not be easily drawn.

Treated like 'human waste' and often cast aside to the peripheries of society, homeless people suffer humiliation on a daily basis. Categories such as legal/illegal, formal/informal, deserving/undeserving highlight the dichotomy that many who are homeless have to fight against. The rights of the individual are absent from the story.

To be homeless is to be asked to face violence, have your life-span cut in half, be more likely to experience ill health and chronic disease, and to be criminalized for survival strategies - even for eating or sleeping in public space. The Human Rights Committee has also acknowledged that widespread homelessness leads to serious health consequences and death and has stated that positive measures are required under article 6 (right to life) to address homelessness.⁴ Yet this recognition has not fueled state action in the same way the torture, or conflict would.

This is not simply a story to tell, but it is the personal experience of billions of people who are homeless or inadequately housed. I have been told, often through tears, that more than any material security, what they yearn for is to be "seen", to be recognized and treated by society as human beings with inherent dignity and respect.

Instead of being supported, homeless people are increasingly criminalized through laws and policies that turn them into law-breakers, rather than protecting their rights. Laws are created to render homeless people invisible, to displace them from land or housing and destroy their makeshift shelters. For example, in many places simple activities linked to basic survival – such as eating or sleeping in public - can lead to fines.⁵ Laws enable authorities to "rescue" street connected children, depriving them of their liberty without due process or respect for the social networks upon which they rely.

The sad reality is that widespread discrimination on the ground of homelessness has yet to be effectively addressed by national human rights institutions, judicial bodies, or via administrative remedies, and yet is recognized in human rights law as an immediate action states must take to address the issue.

How did this happen?

Rapid urbanization globally has resulted in an astonishing accumulation of wealth for a few, accompanied by increasing poverty for many. Real estate speculation and the concept of housing as a commodity has guided urban development as opposed to need, affordability, and respect for human rights.

Homelessness is one of the least examined consequences of unabated inequality, unfair

⁴ See for example, CCPR/C/79/Add.105 (1999), para 12.

⁵ See National Coalition for the Homeless, Share No More: The Criminalization of Efforts to Feed People in Need, 2014), online: < <http://nationalhomeless.org/wp-content/uploads/2014/10/Food-Sharing2014.pdf>>.

distribution of land and property, and poverty occurring on a global scale. It is a result of State acquiescence to real estate speculation and unregulated markets – a result of treating housing as a commodity rather than as a human right. It is rooted in a global privileging of wealth and power, scapegoating and scorn for those who do not have a home.

Fiscal crises around the world have also resulted in significant increases in homelessness and have given rise to a new category of homeless - highly educated individuals who had a good standard of living but who, due to an economic crisis, experienced unemployment and ultimately homelessness. Europe has not been immune. The 2008 crisis, for example, and the accompanying austerity measures, caused a massive rise in homelessness in several European countries, including Spain.⁶

Worldwide there is evidence of a consistent pattern: governments have abandoned their critical role in ensuring social protection including affordable housing, have cut or privatized social benefits, and deferred to the private market allowing private actors and elites with access to power and money to control key areas of decision making.⁷

While the causes of homelessness vary among particular groups, often it is the most vulnerable who are affected: women fleeing violence, entire communities uprooted due to natural disasters or conflict, youth denied access to housing due to age and lack of identification, unequal access to land or discriminatory land laws, or persons with disabilities unable to secure adequate employment.

The common denominator in virtually all structural causes of homelessness is government decision-making and policy that is inconsistent with human rights.

Strategic Policy – A tool for Change

Consultations I have had with experts have suggested that while effective policy responses depend on particular circumstances, strategies must always be multi-pronged, engage a range of policies and programs, and address simultaneously social exclusion and housing deprivation. Most importantly, strategies must be led by stakeholders, and grounded in human rights.

The CESCR has focused on the need for comprehensive housing strategies to address homelessness, framed around the right to housing and ensuring monitoring and accountability with goals, timelines and complaints procedures. Similarly, in the case of street children, the High Commissioner for Human Rights advocates a holistic approach that recognizes rights as interdependent and interconnected, through a coordinated approach across government departments and with the involvement of family and community.⁸

From the creation of national strategies, to implementing a Housing First program, social movements and legal action to the development of local participatory councils, there is no universal policy or legislative solution to homelessness. It must be addressed in multiple ways, engaging with the structural causes of homelessness and with consideration for particular circumstances.

Without access to justice rights remain illusory – present on paper but difficult to grasp in reality. Access to effective remedies was the subject of the first case under the Optional Protocol on the International Covenant on Economic, Social and Cultural Rights, regarding foreclosure procedures

⁶ See for illustration, response to the questionnaire from the Spanish Ombudsman ; Olga Theodorikakou et al “‘Neo-homelessness’ and the Greek Crisis” (2013) 7:2 European Homelessness 203 at 205; European Commission, “Homelessness during the crisis” Research Note 8/2011 online: <

<http://ec.europa.eu/social/BlobServlet?docId=9847&langId=en> at 4, 8, 15.

⁷ Response to questionnaire from the Danish Institute for Human Rights

⁸ A/HRC/19/35, para. 30

in Spain where an estimated 400,000 mortgage foreclosures took place between 2008 and 2012.⁹ The Committee clarified that ensuring effective judicial remedies for the right to adequate housing is an immediate obligation of States since “there cannot be a right without a remedy to protect it”, and held that the State had violated the obligation to provide effective remedies in the context of foreclosure procedures.

Recognizing the power of stating and claiming their rights, some homeless people have taken their fight to the courts. In Argentina, homeless people have the right to assistance, but it is claimed on a case by case basis before the court. For example, in *Q.C. S.Y. v. Government of the Autonomous City of Buenos Aires*, the National Supreme Court ordered the Buenos Aires government to provide adequate shelter for a homeless mother and her disabled son, noting that there should be a minimum guarantee of access to housing for those facing situations of extreme vulnerability.¹⁰

Any policy or legal avenue chosen must address issues faced by different groups, and support individuals in their own personal struggles as well as recognize them as rights-holders. A survey by European homelessness group FEANTSA found that effective strategies must be evidence based; comprehensive; multi-dimensional; rights-based; participatory; based in statutes or legislation; sustainable; needs-based; and bottom-up.

All levels of government should design and implement policies, laws and strategies to prevent and address homelessness. Failure to do so reflects that homelessness has neither been recognized nor addressed as a violation of human rights. What is lacking at all levels of government is a shared commitment to ensuring the enjoyment of the right to adequate housing – and related rights like life, and health.

Since ensuring enjoyment of human rights is a firm legal responsibility of all levels of government, policy makers can be compelled to incorporate human rights into their laws, policies and programs, such as: consulting with homeless people throughout the policy development and implementation process; incorporating measureable goals and timelines into strategies; including monitoring and review mechanisms to ensure successful outcomes; and providing homeless people with a rights-claiming mechanism and access to remedies. These are essential requirements of the meaningful inclusion of homeless people in the human family, restoring to them dignity and respect and protection of the rule of law.

Conclusion

Widespread homelessness is evidence of the failure of States to protect and ensure the human rights of the most vulnerable populations. It is occurring in all countries, regardless of the phase of development of their economic or governance systems, and it has been occurring with impunity. The nature and scope of homelessness globally suggests society’s lack of compassion for the full scale of deprivation and loss of dignity associated with being homeless. It is a phenomenon requiring urgent and immediate action by the international community and by all States.

Instead of being treated as a group of rights bearers whose rights have been systematically violated, homeless people have become a stigmatized group subject to criminalization, discrimination, and social exclusion. Under international law this is simply not acceptable. It has been established that states have immediate obligations to address homelessness. To be clear –

⁹ I.D.G. v Spain, Communication 2/2014. Arrels Fundacio Barcelona in its response to the Questionnaire estimates that for every 100,000 persons, 71 are homeless in Spain.

¹⁰ Corte Suprema de Justicia Nacional, *Q.C., S.Y. c/GCBA s/amparo*, 24 April 2012. See Ministerio Público de la Defensa de la Ciudad Autónoma de Buenos Aires, “Economic, Social and Cultural Rights in the City of Buenos Aires”. October 2015, pages 64-67.

homelessness and the needs of homeless people must be prioritized by all levels government.

The Sustainable Development Goals (SDGs) have offered states an opportunity to adjust housing policies and laws and embrace a human rights approach. I recommend that in line with target 11.1 of the SDGs, all States must commit to eliminating homelessness by 2030 or earlier if possible. This is what is needed if we want to ensure 'no one is left behind'.

Human rights offer the knowledge, framework and standards for states, all that is left is the will to put rights into action.