

Fulfilling the Right of All Children to Adequate Housing:

Problems, Solutions and the Responsibilities of States



Written contribution by COHRE

Submitted to the United Nations Committee on the Rights of the Child in
advance of its general discussion on “Resources for the Rights of the Child -
Responsibility of States”

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Introduction

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

- Statement by the Committee on the Rights of the Child to the second UN Conference on Human Settlements

This written submission is respectfully presented to the United Nations Committee on the Rights of the Child on the occasion of its Day of General Discussion on ‘Resource Allocation for the Rights of the Child.’

While the United Nations Convention on the Rights of the Child is the world’s most widely ratified human rights treaty to date, an enormous amount of work remains to be done to transform this global undertaking into actual realisation of human rights for all children. Children’s housing rights are no exception. Indeed, as COHRE’s report *Defending the Housing Rights of Children* demonstrated, violations of children’s housing rights are pervasive throughout the world (our full report will also be made available to the Committee). In order to remedy the situation, Governments around the world must both refrain from action which violates children’s housing rights, and must take positive steps to ensure fulfilment of these rights.

This written submission presents some of the key findings from that larger COHRE report on children’s housing rights, and emphasises the obligations of States to protect the housing rights of all the world’s children, including through resource allocation. In particular, we have focussed attention on the following key questions, as put by the Committee:

1. What should be the principles and priorities guiding the process of resource allocation for children’s housing rights at national level?
2. What core human rights obligations should inform prioritisation of resource allocations?
3. What is the link between the obligation to utilise the ‘maximum extent’ of available resources and the obligation to fulfil a minimum standard in the implementation of economic, social and cultural rights of children?
4. What criteria can be used to assess whether measures have been undertaken to the ‘maximum extent’ of the available resources?

Finally, the written submission also presents key recommendations regarding resource allocation and the fulfilment of children’s housing rights.

The good news is that experience has shown that, given the political will, violations of children’s housing rights can be effectively prevented and remedied. Relatively small and inexpensive measures can be taken to upgrade the living conditions of children in inadequate housing, including the simple provision of secure tenure and adequate water and sanitation resources. These small steps alone would protect millions of children every year from the trauma of forced evictions, and would greatly reduce global rates of childhood mortality and morbidity. Similarly, successful programmes can be put in place to provide safe and secure homes for homeless children, street children, and other vulnerable youth. These and other measures can be crucial in moving toward fulfilment of the right to adequate housing for all children.

The Global Realities: Children’s Housing Rights in Context

The tragedy of the child begins when that habitat becomes vulnerable. Premature rural-to-urban migration, armed conflict, forced eviction and natural disasters are some of the more dramatic and devastating threats to the child’s environment, leaving far too many children homeless and exposed, without physical or psychological shelter. More chronic and far more prevalent, especially in the slums of our cities, are threats to the child’s well-being posed by inadequate housing, poor sanitation, unsafe drinking water, diseases like HIV/AIDS, crime and insecurity.

— Anna Kajumulo Tibaijuka, Executive Director of UN-HABITAT

In all parts of the world, children are those who are most affected by violations of housing rights. Today, there are estimated to be approximately 150 million street children worldwide.¹ They range in age from three to eighteen years. About 40 percent 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 standard 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 The existence of millions of street children and the huge extent of child homelessness are arguably the most visible and dire violations of children’s housing rights, yet all violations of housing rights, from forced eviction to inadequate housing conditions, have particular ramifications for children.

Housing rights are enshrined in several international human rights instruments and have long been regarded as fundamental to ensuring the well-being and dignity of the human person, including of the child. Housing rights are integral to human rights as a whole, and have been included in the most authoritative international statements of human rights, including the UN Convention on the Rights of the Child.

The right to adequate housing has been best defined by the UN Committee on Economic, Social and Cultural Rights in its General Comment No. 4 on the right to adequate housing. Perhaps the most comprehensive international legal statement on this right to date, it is meant to interpret and define the legal principles articulated in Article 11(1) of the ICESCR. Children’s housing rights advocates should be aware of this General Comment, as it clearly explains the substantive components of the right to adequate housing that apply to everyone, everywhere — including children.

In this regard, the Committee identified seven key elements that comprise the right to adequate housing: Each of these seven elements of the right to adequate housing is essential to children’s full enjoyment of their housing rights. **Legal security of tenure** protects children against the

¹ UNESCO, ‘Education: Who Are Excluded and Why?’ (2004), http://portal.unesco.org/education/en/ev.php-URL_ID=28705&URL_DO=DO_PRINTPAGE&URL_SECTION=201.html

² Ibid.

³ UNICEF report, *State of the World’s Children 2005*, Dec. 2004, http://www.unicef.org/publications/index_24432.html

⁴ Ibid.

trauma of forced eviction and displacement.⁵ **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 jeopardised 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 environmental pollution and other toxic threats 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.

Basic Principles Guiding Resource Allocation

In its essence, housing as a living impulse creates roots, entailing security. The house is to be seen as a home, the one stable point in the child’s life where she/he can return to. It is a place where the child can eat, laugh, play — where she/he will find love and peace.

— Miloon Kotbari, *United Nations Special Rapporteur on the Right to Adequate Housing*

Key Questions: What should be the principles and priorities guiding the process of resource allocation for children’s housing rights at national level? What core human rights obligations should inform prioritisation of resource allocations?

When it comes to upholding children’s housing rights, States have a range of obligations under international human rights law (please see COHRE’s full report *‘Defending the Housing Rights of Children’* for more detail). As has been noted, the Convention on the Rights of the Child underscores the basic principles that:

- States must act in ways that uphold children’s rights to *non-discrimination and equality*;
- States must act in ways that uphold children’s rights to *survival and development*;
- States must act in ways that uphold children’s rights to *participate meaningfully in all matters that affect them*;
- States must act in a manner consistent with the *‘best interests of the child’*;
- States must act in ways which *pay special attention to the most disadvantaged groups of children, such as children coming from vulnerable minorities*.

These principles must serve as the foundation for all child-related policies, and must also be meaningfully reflected in policies of resource allocation aimed at fulfilling children’s human rights, including their right to adequate housing.

⁵ As the UN Committee on Economic, Social and Cultural Rights (CESCR) has also recognised “... children, youth ... and other vulnerable individuals and groups all suffer disproportionately from the practice of forced evictions”. UN CESCR, ‘General Comment No. 7 (1997): The right to adequate housing (art. 11.1 of the Covenant): forced evictions’, UN Doc.E/C.12/1997/4, [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+Comment+7.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CESCR+General+Comment+7.En?OpenDocument), para. 10.

Resources for the Housing Rights of Children: Examining Positive Obligations of States

... [i]t is largely a myth that the governments of developing countries cannot afford to guarantee basic positive rights - and especially adequate nutrition, primary health care, and basic education - to all of their children.

- Partha Dasgupta, ‘Commentary: National Performance Gaps,’ *The Progress of Nations 1996*

Key Questions: What is the link between the obligation to utilise the ‘maximum extent’ of available resources and the obligation to fulfil a minimum standard in the implementation of economic, social and cultural rights of children? What criteria can be used to assess whether measures have been undertaken to the ‘maximum extent’ of the available resources?

The United Nations Committee on the Rights of the Child, in its General Comment No. 5 on ‘General measures of implementation for the Convention on the Rights of the Child’, notes that the Convention accepts, in some States, that lack of financial and other resources can hamper the full implementation of economic, social and cultural rights. This acknowledgement introduces the concepts of ‘progressive realisation’ and ‘maximum extent of their available resources’ into the lexicon of State Party obligations.⁶ Nonetheless, these concepts are not meant to deprive those obligations of meaningful content, and should not be interpreted in a manner which threatens or is in any way antithetical to the full realisation of children’s housing rights.

It deserves to be mentioned within the context of this discussion that many violations of children’s housing right – for example the phenomenon of forced evictions – result not from a failure of government to adequately resource housing programmes for children (i.e. out of a failure to comply with positive obligations), but rather out of failures to *respect and protect* children’s housing rights as matters of law and practice (i.e. out of a failure to comply with negative obligations). Nonetheless, because the Day of General Discussion is focussed on the question of resource allocation, we will limit our remarks within this written submission to the obligation of States to *fulfil* children’s housing rights. This obligation 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 programmes that are sensitive to children’s special needs.

International law requires that States immediately take steps in this regard, using the maximum available resources to progressively realise children housing rights — without discrimination on any grounds. For example, with respect to the right to adequate housing, the Committee on Economic, Social and Cultural Rights has stressed that States should develop identifiable strategies aimed at securing the right of all persons to live in peace and dignity. Similarly, the Committee on the Rights of the Child has asserted that States are obligated to conduct a comprehensive review of all domestic legislation and related administrative policies to ensure full compliance with the Convention on the Rights

⁶ The Committee on the Rights of the Child has held that *States must be able to demonstrate that they have implemented economic, social and cultural rights to the maximum extent of their available resources and that, where necessary, they have sought international cooperation to assist with the fulfilment of such rights.* UN Committee on the Rights of the Child, General Comment No. 5.

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of the Child.⁷ This Committee has also stated that States Parties to the Convention need to ensure, by all appropriate means, that its provisions are given legal effect within their domestic legal systems.⁸ This would among other things require that children’s housing rights can be effectively invoked in domestic courts of law. The Committee on the Rights of the Child has provided specific guidance to States by making recommendations for national planning to ensure that the rights of children are prioritised. As the Committee itself has noted:

If Government as a whole and at all levels is to promote and respect the rights of the child, it needs to work on the basis of a unifying, comprehensive and rights-based national strategy, rooted in the Convention.⁹

Such national strategies should be articulated through a process in which children themselves can meaningfully participate and engage in policy-making to address issues that affect them. In this framework, “particular attention will need to be given to identifying and giving priority to marginalised and disadvantaged groups of children”.¹⁰ The Committee has underscored that:

The strategy must not be simply a list of good intentions; it must include a description of a sustainable process for realizing the rights of children throughout the State; it must go beyond statements of policy and principle, to set real and achievable targets in relation to the full range of economic, social and cultural and civil and political rights for all children.¹¹

Even States with only limited resources are obligated to undertake, without delay, measures to guarantee fulfilment of the right of children to adequate housing, if necessary seeking international assistance to do so. 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.¹² These plans and strategies, however, must be accountable, must be reasonable, and must incorporate clear standards and benchmarks for implementation. Furthermore, in this process of incorporating Convention provisions into domestic law and policies, international law obligates States *to prioritise those children who are the most vulnerable or marginalised*. States must adopt all appropriate legislative, budgetary, administrative and other measures to ensure that children’s housing rights are fully upheld. Ultimately, such rights should be fully realised by all children.

⁷ UN Committee on the Rights of the Child, General Comment No. 5. The general measures of implementation identified by the Committee are intended to promote the full enjoyment of all Convention rights by all children, through legislation, the establishment of coordinating and monitoring bodies – governmental and independent –, comprehensive data-collection, awareness-raising and training, as well as the development and implementation of appropriate policies, services and programmes. According to the Committee: “One of the satisfying results of the adoption and almost universal ratification of the Convention has been the development at the national level of a wide variety of new child-focused and child-sensitive bodies, structures and activities – children’s rights units at the heart of government, ministers for children, inter-ministerial committees on children, parliamentary committees, child impact analysis, children’s budgets and ‘state of children’s rights’ reports, NGO coalitions on children’s rights, children’s ombudspersons and children’s rights commissioners and so on” (para. 9).

⁸ Ibid.

⁹ Ibid., para. 28.

¹⁰ Ibid., para. 30.

¹¹ Ibid., para. 32.

¹² South Africa’s Grootboom case is particularly instructive here. In this case, the Constitutional Court of South Africa ruled that the State was required to take steps towards the progressive realisation of the right to adequate housing. This included the obligation to devise, fund, implement and supervise measures, within its available resources, to provide relief to those in desperate need. Constitutional Court of South Africa: Case CCT 11/00, *Government of the Republic of South Africa and Others v. Irene Grootboom and Others*, 2001 (1) SA 46 (CC), 2000 (11) BCLR 1169 (CC), judgment 4 Oct. 2000.

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Determining whether a State has, in fact, prioritised the enjoyment of children’s housing rights to the maximum degree possible is a matter which must be addressed holistically and comparatively. In order to make a proper assessment, the Committee should consider the following factors:

- 1. Assess the status of negative obligations:** Has the State Party fully complied with its obligation to respect children’s housing rights? Has the State Party fully complied with its obligation to protect children’s housing rights? If not, these failures could indicate a lack of political will on the part of the State to effectively ensure children’s human rights on a structural level. Widespread violations of children’s housing rights – across all levels of obligation -- may imply more profound issues than simply a lack of resources.
- 2. Assess whether a State has taken immediate steps:** Has the State Party taken immediate steps – such as the development of a national strategy – aimed at fulfilling children’s housing rights? Does that strategy comply with the basic principles guiding resource allocation, as discussed above? Is the strategy accountable, reasonable, and does it incorporate clear standards and benchmarks for implementation?
- 3. Assess whether a State has prioritised the most vulnerable and marginalised:** Have State interventions, policies or programmes led to tangible improvement in the living conditions of the poorest children living within the country? What proportions of children do not enjoy their economic, social and cultural rights (for example, adequate housing, clean water, sanitation, adequate nutrition, education, essential health services, etc.)?
- 4. Assess prioritisation through international comparative strategies:** Is the State Party’s record on children’s housing rights demonstrably better or worse compared with other countries at a similar stage of development (for example, with a similar GDP)?
- 5. Assess prioritisation through national comparative strategies:** What percentage of the national budget is allocated towards the fulfilment of children’s rights? How does this number compare to other national budgetary prioritisations (for example, military or defence expenditures)? Has the State requested international assistance to improve the housing rights situation for its children?

It is also suggested that the Committee on the Rights of the Child initiate discussions with the Committee on Economic, Social and Cultural Rights and the UN Special Rapporteur on the right to adequate housing to discuss these matters further.

Recommendations to States

In terms of specific resource allocation and policy intervention aimed at securing children’s housing rights, it is suggested that States prioritise the following measures linked explicitly to the seven key elements of the right to adequate housing:

Legal security of tenure: States should provide the greatest possible security of tenure to children and their families and should immediately halt the practice of forced eviction. In exceptional cases when evictions are deemed to be justified under international human rights standards and are unavoidable, States should make every effort not to disrupt children’s schooling and to minimise the distressing effects of eviction on them, and should develop and implement special protocols on caring for children during and after eviction proceedings.

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Evictions should never result in children being rendered homeless or vulnerable to the violation of other human rights.¹³

Availability of services, materials, facilities and infrastructure: States should, as a matter of priority, ensure that all children have access to safe drinking water and sanitation, and should provide subsidies for water and sanitation provision targeted at households in need, including those with or headed by children. States should also develop a concrete plan to expand access to water and sanitation to all children, with concrete objectives and timelines.

Affordability: States should provide material assistance and support to disadvantaged children and their families who are unable to access adequate housing by their own means. In this regard, States should establish housing subsidies for those unable to afford adequate housing, including children. States and financial institutions should also provide forms and levels of housing finance that adequately reflect the housing needs and economic realities of the poor.

Habitability: Children living in poor housing and those who suffer negative health consequences due to their poor living conditions should receive priority attention in order to improve their housing situation in the short term. For this purpose, States should allocate appropriate and sufficient resources towards slum upgrading and other housing and community improvement programmes.

Accessibility: States should develop national housing standards and building codes that take full account of child safety. In this regard, States should consider the special needs and interests of especially vulnerable children, which means that, among other measures, adequate and appropriate housing should be made accessible to disabled children.

Location: States must ensure that housing is located in an area that is safe for children and does not expose them to environmental hazards and pollution including agricultural pesticides, groundwater contaminants, garbage dumps, chemical residue, and air toxins from manufacturing facilities. States should also ensure that children, especially those living in poor communities, have access to local day-care centres and/or schools which are accessible and affordable to their families. Children should also have access to social play spaces and community recreational areas.

Cultural adequacy: Children from all cultural backgrounds should be able to participate meaningfully in all housing policy decisions that affect them, such that their cultural values can be reflected and upheld.

We hope that this information will be useful to the Committee on the Rights of the Child, as well as to other organisations working to defend children’s rights throughout the world. For more information on children’s housing rights, please contact cohre@cohre.org



¹³ Ibid.