

DEVELOPMENT AND HUMAN RIGHTS: LITIGATING THE RIGHT TO ADEQUATE HOUSING

*Abul Hasnat Monjurul Kabir**

1. Introduction

More than one billion people around the world do not reside in adequate housing, and one million people have no home at all.¹ During the next generation, the global urban population will double, from 2.5 billion to 5 billion. Almost all of the increase will be in developing countries. One third of the developing world's urban population lives in extreme poverty. To most of them, housing means living in squalid and unsafe squatters' settlement or slums.²

Statistics, however, do not fully capture the global dimension of the state of housing. To gain an understanding of the sheer inadequacy and insecurity in which people and communities live, one need only consider the following contemporary forms of distressed housing:

- * slums and squatter settlements;
- * old buses;
- * shipping containers;
- * pavements;
- * railway platforms and cleared areas adjacent to railway tracks;
- * streets and roadside embankments;
- * cellars, staircases, rooftops and elevator enclosures;
- * cages, plastic sheets and cardboard boxes; and

* Human rights advocate, Honorary Director of Law Watch, Centre for Studies on Human Rights Law, Programme Officer, UNDP, Dhaka, Bangladesh.

¹ The Global Strategy for Shelter to the Year 2000-UN Doc.A/43/8/Add.1.

² See *We the Peoples: The Role of the United Nations in the 21st Century*, Millennium Report of the Secretary-General of the United Nations. Available at: <http://www.un.org/millennium/sg/report/full.htm>.

* aluminium and tin shelters.

The need for a secure place to live for human dignity, to maintain physical and mental health, well-being and an over all quality of life, can only be culminated through adequate housing. Housing plays a significant role in providing basic amenities like access to drinking water and adequate sanitation facilities. The states of health, education, environment, participation, community service et cetera, are inextricably entwined with housing. Housing has a substantial stake in development activities.

Adequate housing finds explicit recognition within a broad spectrum of international instruments.³ However, it is sad that there is still a dearth of understanding and recognition of this as one of the most basic human needs and fundamental requisites of standard living in many parts of the world. Many states simply try to exploit the 'progressive attainability'⁴ of their obligation towards this right and evade their responsibility.

There has been much discussion in recent years over the interdependence between human rights and development. However, this public discourse on human rights and development frequently ignores the fundamental two-way relationship. The world now accepts that sustainable development is impossible without human rights. What has been missing is the recognition that the advancement of an interconnected set of human rights is impossible without development with a rights-based approach.

Since the production of the final document from the 1993 Vienna World Conference on Human Rights, the international community has moved toward accepting the equality and indivisibility of all human rights. Governments must continue to work to advance all human rights for all people- a rights-based approach to development- can be meaningful and will go a long way to sustain and prosper the desired human development.

This article focuses briefly on the changing global trend of considering development as sustainable human progress rather than a mere growth oriented notion.

³ See Universal Declaration of Human Rights (UDHR, Article 25(1)), the International Covenant on Economic, Social and Cultural Rights (ICESCR, Article 11(1)), the Convention on the Elimination on All Forms of Racial Discrimination (CERD, Article 5(e)(iii)), the Convention on the Rights of the Child (CRC, Article 27), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, Article 14(2)), the Convention Relating to the Status of Refugees (Article 21).

⁴ See e.g. Article 2(1) of the ICESCR.

Following the introduction, the next part of the article explores the changed perception of development. The third part deals with the scope and the content of the human right to adequate housing. The article then examines the saga of state obligation towards the right to adequate housing in the fourth part. The fifth part examines the inter-relationship between the human right to adequate housing and the changed concept of development. The sixth part, this article intends to analyse the issues of eviction, the contribution of the urban poor in the economy of a developing country and the interplay of the right to adequate housing with the process of development based on a landmark legal battle of Bangladesh. Finally, the author will offer some concluding observations.

2. Towards a Human Face of Development?

A common phenomenon in the last century was to define development in terms of growth per capita in gross domestic product (GDP) or equate development with economic growth. Most of the development projects in the 20th century were designed to achieve objectives whose success was measured primarily in economic terms. Traditional analyses mainly focused on economic indicators, the state of infrastructure, agricultural output, demographic data and so on.⁵

During the last few decades of the 20th century, a number of efforts sought to explore the human face of development. One major mainstream response to concerns over blocked or distorted development, has been to emphasise sustainable growth and human development. The more radical alternatives to growth-based concept of development have emphasised equity or social justice.⁶

The central goal of development has and will be the promotion of human well-being. Given that human rights define and defend human well-being, a rights-based approach to development provides both the conceptual and practical framework for the realisation of human rights through the development process. A rights-based approach to development is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. Essentially, a rights-based approach integrates the norms, standards and

⁵ See e.g. Adelman, I. & Morris, C.T. *Economic Growth and Social Equity in Developing Countries*, (Stanford, Stanford University Press, 1973); Fields, G. S. *Poverty, Inequality and Development*. (Cambridge, Cambridge University Press, 1980).

⁶ Donnelly, J, *Human Rights, Democracy and Development* (1999) 21 HRQ 608 at 624.

principles of the international human rights system into the plans, policies and processes of development. The norms and standards are those contained in the wealth of international treaties and declarations. International cooperation in promoting and encouraging respect for human rights and fundamental freedom for all, is one of the purposes of the United Nations set out in Article 1 of the UN Charter.

The principles of such an approach include equality, equity, accountability, empowerment, participation and other elements such as the express linkage to rights, accountability, empowerment, participation, non-discrimination and attention to vulnerable groups.

Human rights and sustainable human development are in fact, mutually dependent and reinforce one another. Where the rule of law and equity do not exist or where ethnic, religious, or sexual discrimination is accepted, development efforts are unsustainable. Where restrictions on free speech, association and within the media exist, development is hindered.

Conversely, human rights are enhanced greatly when gender equity or poverty reduction strategies empower people to become aware of their rights and to exercise those rights. Therefore, there is a direct link between human rights and sustainable human development, which incorporates both the right to development and the full enjoyment of human rights. Furthermore, the basic characteristics of good governance, namely the rule of law and freedom of expression, participation, and association are all dependent on respect for human rights.

The Declaration on the Right to Development (DRD) 1986 is one of many declarations and international instruments that stress the indivisibility and interdependence of human rights. By placing the individual at the centre of development activities and proclaiming an integrated vision of human rights, the Declaration becomes a vehicle for the indivisibility and complementarity of different categories of human rights and for recognising the promotion and protection of all human rights as the basis and measure of sustainable development. Article 1 of the Declaration on the Right to Development states that:

[t]he right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

This right may include:

- * full sovereignty over natural resources;
- * self-determination;
- * popular participation in development;
- * equality of opportunity; or
- * the creation of favourable conditions for the enjoyment of other civil, political, economic, social and cultural rights.

Many of the elements set out in the Declaration of 1986 continue to provide the global building blocks of development programmes, movements, initiatives and ideas both ambitious and modest. Most importantly, the human person is the entity identified as being the beneficiary of the right to development, as of all human rights. Both individuals and peoples can invoke this right to development. The right imposes obligations both on individual States—to ensure equal and adequate access to essential resources—and on the international community to ‘promote fair development’ policies and effective international cooperation.

A growing process of convergence in the theory and practice of human rights and development particularly (as they relate to the lives of people living in poverty and social isolation), are reflected in the series of recent UN Conferences. The 1993 World Conference on Human Rights acknowledged, “Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing.”⁷ Heads of State and Government at the 1995 World Summit for Social Development pledged themselves “to a vision for social development” based on “human dignity, human rights and equality” (among other things).⁸

Efforts to narrow the gaps both in action and in understanding between human rights organisations and development agencies, are also noted. One significant expression of this is the work of the United Nations Development Programme (UNDP) in its Human Development Report.⁹ In

⁷ Vienna Declaration and Programme of Action, para 8, reprinted in 32 ILM 1661 (1993).

⁸ Hausermann, J. *A Human Rights Approach to Development* (London, Rights and Humanity, 1998), p. 115; quote taken from the Copenhagen Declaration and Programme of Action of the World Summit for Social Development.

⁹ *Human Development Reports* have been produced annually since 1990. They are published by Oxford University Press for the UNDP.

1998, the UNDP announced its policy document 'Integrating human rights with sustainable human development'. This document in particular, is viewed as a major shift in its approach towards development. In the words of James Gustav Speth, former Administrator, UNDP:

[U]NDP advocates the realisation of human rights as part of sustainable human development, an approach that places people at the centre of all development activities. The central purpose is to create an enabling environment in which all human beings lead secure and creative lives. Sustainable human development is directed towards the promotion of human dignity-and the realisation of all human rights, economic, social, cultural, civil and political.¹⁰

The Human Development Report 2000 on "Human Rights and Human Development" also stresses that human rights and human development share a common vision and a common purpose: to secure the freedom, well being and dignity of all people everywhere. Human rights provide a normative foundation that will help bring about essential requirements for social transformation and will increase sustainability, transparency and accountability of developmental programmes. The ultimate aim of human rights-based programming will be to align the universally accepted human rights values with consistent action.

Major international donor agencies now refocus their international development efforts to reduce poverty. They now support policies that create sustainable livelihoods for poor people, foster human development, promote human rights and conserve the environment.¹¹ The World Bank Group lately recognised that it had an express role to play in the promotion and protection of human rights.

In its recent publication, the Bank asserts:

[T]he world now accepts that sustainable development is impossible without human rights. What has been missing is the

¹⁰ United Nations Development Programme: *Integrating Human Rights with Sustainable Human Development*, A UNDP Policy Document, 1998, p 3. Available at: <http://magnet.undp.org/Docs/policy5.html>

¹¹ See *Eliminating World Poverty: A Challenge for the 21st Century-A DFID White Paper-Department for International Development London, HMSO Publications, 1997. Available at: http://www.dfid.gov.uk.*

recognition that the advancement of an interconnected set of human rights is impossible without development.¹²

The promotion of a rights-based development approach is aided by the unanimous recognition of the inextricable and interdependent link between human rights and development by the international community of nations. With human rights now increasingly recognised as a foundation for development, it provides impetus and focus to work at poverty eradication and human development. The human right to adequate housing could be a glaring example to this effect.

3. Scope of the Right to Adequate Housing

Over the past decade, the right to adequate housing has been consistently re-affirmed as a distinct human right by various bodies in the UN system, numerous national constitutions, national legislation and civil society organisations across the world. It also found repeated recognition as a fundamental human right in the Istanbul Declaration and the Habitat Agenda, with States reaffirming:

our commitment to the full and progressive realization of the right to adequate housing, as provided for in the international instruments.¹³

¹² The World Bank, *Development & Human Rights: The Role of the World Bank*, (Washington, The World Bank, 1998), p. 2.

¹³ Several non-binding declarations, resolutions and recommendations by the UN and its specialized agencies related to housing as a human right: Declaration on Social Progress and Development (1969), Part II, Article 10; Declaration on the Rights of Disabled Persons (1975), Article 9; Vancouver Declaration on Human Settlements (1976), Section III (8); International Labour Organization (ILO) Recommendation No. 115 (1961), Principle 2; and ILO Recommendation No. 62 Concerning Older Workers (1980), Article 5(g); Declaration on the Right to Development (1986), Article 8(1); United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities resolution 1994/8 on "Children and the Right to Adequate Housing" adopted 23 August 1994; United Nations Commission on Human Rights resolution 1993/77 on "Forced Evictions," adopted on 10 March 1993; United Nations Commission on Human Settlements resolution 14/6 on "The Human Right to Adequate Housing," adopted 5 May 1993; United Nations General Assembly Resolution 42/146 on the "*Realization of the Right to Adequate Housing*," adopted 7 December 1987, which: "reiterates the need to take (at the national and international levels) measures to promote the right of all persons to an adequate standard of living for themselves and their families (including adequate housing) and calls upon all States and international organizations concerned, to pay special attention to the realization of the right to adequate housing in carrying out measures to develop national shelter strategies and settlement improvement programmes within the framework of the Global Strategy for Shelter to the Year 2000."

The indivisibility and interdependence of all human rights find unequivocal expression through the right to housing. Housing is globally viewed as a primary base for meaningful enjoyment of a multitude of other rights, for example, the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence, the right to participate in public decision-making. Equally the right to security of persons (in the case of forced or arbitrary evictions or any other forms of harassment) and the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence, constitute a very important dimension in defining the right to adequate housing.¹⁴

Housing is indeed a foundation from which other legal entitlements can also be achieved. For example, the adequacy of one's housing and living condition is closely linked to the degree to which the right to environmental hygiene and the right to the highest attainable level of mental and physical health can be enjoyed. In view of the Committee on the Economic, Social and Cultural Rights (CESCR):

[t]he right to housing should not be interpreted in a narrow and 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. ... The reference in Article 11(1) must be read as not just to housing but also to adequate housing.¹⁵

The right to adequate housing attracted more attention from the Committee in a way than any of the other rights contained in the International Covenant on Economic, Social and Cultural Rights. In its Sixth session, the Committee adopted a detailed General Comment¹⁶ covering a wide range of aspects of the right.

The component of adequacy associated with this right, has been interpreted in terms of 'legal security of tenure', 'availability of services, materials, facilities and infrastructure', 'affordability', 'habitability', 'accessibility' and 'location'.

¹⁴ General Comment No.4 of the CESCR (1991), para9, HRI/Gen/Rev.1, July 1994.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, para 7.

Both the Commission on Human Settlements and Global Strategy for Shelter to the Year 2000 have asserted that adequate shelter means adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost.¹⁷

The Committee also deals with the crucial issue of forced eviction. In 1991, the Commission stated that “instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles in international law.”¹⁸ Subsequently, the Committee having considered a significant number of forced eviction reports including instances in which State parties had violated their obligations, decided to issue another detailed General Comment regarding forced evictions. The Committee defined the term as “permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”¹⁹

According to the Committee, forced evictions manifestly breach the rights enshrined in the Covenant on Economic, Social and Cultural Rights. In addition to this breach, the practice of forced evictions may also result in “violations of civil and political rights, such as the right to life, the right to the security of the person, the right to non-interference with privacy, family and home and the right to peaceful enjoyment of possession.”²⁰

The right to adequate housing guarantees all people the right to live in security, peace and dignity. It appears that the right involves more than the right to access to shelter and includes indivisible, interdependent and interrelated human rights, including the following human rights:

- * to adequate shelter;
- * to an adequate standard of living;
- * to access to safe drinking water and sanitation;
- * to the highest attainable standard of physical and mental health;
- * to a safe and healthy environment;
- * of the child to an environment appropriate for physical and mental development;

¹⁷ *Ibid.* para 8.

¹⁸ *Ibid.* para 18.

¹⁹ General Comment No.7 (1997), E/C.12/1997/4.

²⁰ *Ibid.*

- * to access to resources, including energy for cooking, heating, and lighting;
- * of access to basic services, schools, transportation and employment options;
- * to affordability in housing so that other basic needs are not threatened or compromised;
- * to freedom from discrimination in access to housing and related services based on sex, race, or any other status;
- * to choose one's residence, to determine where and how to live and to freedom of movement;
- * to freedom from arbitrary interference with one's privacy, family or home;
- * to security, including legal security of tenure;
- * to protection from forced evictions and the destruction or demolition of one's home including in situations of military occupation, international and civil armed conflict, establishment and construction of alien settlements, population transfer, and development projects; and
- * to equal protection of the law and judicial remedies for the redress of violations of the human right to adequate housing.

This catalogue as to the scope and content of the right to adequate housing is not exhaustive; however, it forms an indispensable part of ensuring human dignity. "Adequate housing" encompasses more than just the four walls of a room and a roof over one's head. Not only is housing essential for normal healthy living, it fulfils deep-seated psychological needs for privacy and personal space; physical needs for security and protection from inclement weather; and social needs for basic gathering points where important relationships are forged and nurtured. In many societies, a house also serves an important function as an economic centre where essential commercial activities are performed.

4. The Saga of State Obligation

One of the major innovations of the Declaration on the Right to Development is the provision mandating states to remove "obstacles" to development arising from the failure to respect rights and freedoms. This means that the State itself will need to:

- * observe and respect rights and freedoms as embodied in the international human rights Covenants and related instruments, and

- * address the need to reform state structures, institutions and policies, which are obstacles to the realisations of these rights.

Echoing this principle it has been argued that states are not obliged to accommodate everyone with free food, clothing and housing, but rather they are to provide the legal, economic and social environment in which individuals might have an adequate scope to fulfil their needs and the needs of their families.²¹

In fact, 145 states have ratified or acceded to the International Covenant on Economic, Social and Cultural Rights.²² This text contains perhaps the most significant foundation of the right to housing found in the entire body of legal principles, which comprise international human rights law:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.²³

As noted above, the right to adequate housing has been recognised in all major international human rights treaties including the:

- * Convention on the Elimination of All Forms of Racial Discrimination;
- * Convention on the Elimination of Discrimination Against Women;
- * Convention on the Rights of the Child;
- * International Convention on the Suppression and Punishment of the Crime of Apartheid; and
- * the International Convention Relating to the Status of Refugees.

Several regional human rights instruments also guarantee every individual the right to adequate housing. Under the Charter of the Organization of American States (OAS), Article 31(k), "Member States agree to dedicate

²¹ Human development reports, *supra*, note 9 above, p.164. *See also* Alston, P. & Quinn, G. *The Nature and Scope of States' Parties Obligations under the International Covenant on Economic, Social and Cultural Rights*, 1987, HRQ, Vol 9 at pp. 172-181.

²² Available at: <http://www.unhchr.ch/pdf/report.pdf>.

²³ Article 11.1 of the ICESCR.

every effort to achieve... adequate housing for all sectors of the population."

The European Social Charter, the European Convention on Human Rights and Fundamental Freedoms, the European Convention on the Legal Status of Migrant Workers, the Resolution on Shelter for the Homeless in the European Community and the Final Act of Helsinki, all contain express provisions and references to the right to adequate housing. More than fifty national constitutions recognise the right to housing and related components as human rights and explicitly impart constitutional support towards this end.²⁴

In 1995, during the drafting of the new South African Constitution, the issue of state obligation vis-à-vis economic, social and cultural rights, especially the question of inclusion of the right to housing has been raised. The position finally taken by the South African Constitutional Assembly reflects the balance between the human rights of individuals and the obligations of states. The right to housing is expressed in that Constitution as "the right to have access to adequate housing", whilst the "state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the rights."²⁵ The South African Constitution also provides for the justiciability of the bill of rights, including the right to adequate housing. It expressly confers legal standing to aggrieved persons and their representatives to approach the courts to enforce their rights.

At the UN Conference on Human Settlements (Habitat II) in 1996, there were differences of opinion on some specific aspects of the right to adequate housing. The US took an extreme position doubting even its very existence, even though²⁶ it had already been accepted in the International Bill of Rights. On the other hand, other states strongly asserted that recognition and protection of this right must form the basis of human settlement strategies:

²⁴ Eide, A., Krause, A.C. & Rosas, A.(Eds) *Economic, Social and Cultural Rights – A Textbook*, (Dordrecht, Martinus Nijhoff Publishers, 1995), p. 109. See also Leckie, S. *Housing as a Need, Housing as a Right: International Human Rights Law and the Right to Adequate Housing*, London, Human Settlement Programme, International Institute for Environment and Development, 1992.

²⁵ Article 26 of the Constitution of the Republic of South Africa, adopted 8 May, 1996, in force 7 February 1997.

²⁶ The US adopted this policy in the lead-up to Habitat II conference. See, for an excellent analysis Alston, P. *The US and the Right to Housing: A Funny Thing Happened on the Way to the Forum*, *European Housing Right Law Review*, 1996, at pp. 120-33.

[S]ince the adoption of the Universal Declaration of Human rights in 1948, the right to adequate housing has been recognised as an important component of the right to an adequate standard of living. All Governments without exception have a responsibility in the shelter sector, as exemplified by their creation of ministries of housing or agencies, by their allocation of funds for the housing sector and by their policies, programmes and projects ... Within the over all context of an enabling approach, Governments should take appropriate action to promote, protect and ensure the full and progressive realisation of the right to adequate housing.²⁷

The incorporation of such strong commitments towards the right to adequate housing at both the national and international levels, reflects the general acceptance of it as essential bedrock for the strategies of human development. If the purpose of development is to create better choices and options for a humane living, undoubtedly housing is one of the core components. On a related point, it also fulfils certain basic preconditions of sustainable development.

5. The Interlink between Development and Right to Adequate Housing

The Declaration on the Right to Development (DRD)²⁸ is one of many declarations and international instruments that stress the indivisibility and interdependence of human rights. As aptly pointed out by Mary Robinson:

[B]y placing the individual at the centre of development activities and proclaiming an integrated vision of human rights, the Declaration is a vehicle for the indivisibility and complementarity of different categories of human rights and for recognising the promotion and protection of all human rights as the basis and measure of sustainable development.²⁹

The DRD regards human rights as both a condition and objective of development. Its aim was to respond concerns regarding:

²⁷ Article 61 of the Istanbul Declaration and Global Plan of Action.

²⁸ General Assembly Resolution 41/128 (1986), adopted by a vote of 146 to one (the United States) with six abstentions.

²⁹ The 1999 Report of the UN High Commissioner for Human Rights to ECOSOC, E/1999/96.

[t]he existence of serious obstacles to development, as well as to the complete fulfilment of human beings and of peoples, constituted, *inter alia*, by the denial of civil, political, economic, social and cultural rights....³⁰

Clearly emerging is a potent link between the right to adequate housing and development as the former ensures the full enjoyment of a host of rights by individuals having placed at the centre of all development activities.

Lack of housing for human resources and potential work force or denial of this right, for example, by way of forced eviction seriously endanger the development activities and undermines human dignity. Such deprivation also turns any endeavour for achieving even fulfilment of human beings into a sheer mockery.

The anti-slum drive violation right to housing in Bangladesh leading to homelessness and untold sufferings of thousands of poverty-stricken people actively contributing to development process amply testifies this.³¹ Such instances are common phenomena in many developing countries of the world.

Housing also influences the concept of meaningful participation, a key in the development process. Both the World Bank and the UNDP now endorse greater popular participation in the practice of their economic programs.³²

In a report by the UN Secretary General at the request of the Commission on Sustainable Development, the issue becomes more pertinent:

[I]n order to eradicate poverty and achieve environmental sustainability, it will be necessary to shift from traditional top-down approaches to development, which often amount to the imposition of a social welfare system, (...) to bottom up approaches. This calls for the full participation of all citizens in socio-political processes and in the planning and implementation of socio-economic development programmes. Full participation of all will require the creation of an enabling political environment,

³⁰ DRD, preamble.

³¹ See Part 6 of this paper.

³² Forsythe, D. P. *The United Nations, Human Rights, & Development*, 19 HRQ 335, 1997, at p. 349.

decentralisation of decision making to the local level, and explicit measures to empower the poor in general and women in particular, so that they may be able to include their socio-economic priorities in national, regional and local development plans and participate fully in the implementation of those plan.³³

Housing creates an enabling environment for participation, especially at local and community level. Active, free and meaningful participation in development cannot be attained without adequate provision for housing. In fact, the concept of freedom of association, guaranteed by so many international treaties and ILO mechanism, finds secured place in community housing, for example tenants and other community groups. The 1986 Declaration also emphasises the importance of participation.³⁴

The vision of the United Nations Development Programme for sustainable growth confirms this link. Human development as a term includes expanding the choices for all in society in terms of five aspects: empowerment, co-operation, equity, sustainability and security.³⁵ Adequate housing empowers people, increases their capability and choice, assists them to co-operate with each other, create a feeling of fraternity within a community, enhances the access to basic amenities, creates a desire for equitable environment and sustains it for future generation.

Most importantly, it devises a sense of both personal and social security against odds and oppression or sudden unwarranted and detrimental interference and disruptions. The multifaceted roles of this right and its impact on development are discussed above.

With regard to forced or arbitrary eviction, “which constitutes a gross violation of human rights, in particular the right to adequate housing”,³⁶ it is apparent that eviction vitiates the environment necessary for social and human development. Women, children and youth, indigenous peoples, ethnic, racial, religious or other minorities, low-income social groups,

³³ *Poverty Eradication and Sustainable Development*, Report prepared by the UN Secretary-General at the request of the Commission on Sustainable Development, UN Doc. E/CN.17/1995/14, para 102(e).

³⁴ See e.g. Ginther, K. *The Domestic Policy Function of a Right of Peoples to Development: Popular Participation a New Hope for Development and a Challenge for the Discipline*, found in Chowdhury, S.R., Denters, E. M.G. & de Waart, P. (Eds) *The Right to Development in International Law*, (Dordrecht, Martinus Nijhoff Publishers, 1992).

³⁵ United Nations Development Programme, *Governance for Sustainable Development: A UNDP Policy Document 2* (1997). Available at: <http://magnet.undp.org/policy/default.htm>.

³⁶ Commission on Human Rights Resolution 1993/77, para 1.

occupied populations and those without legal security of tenure tend to suffer disproportionately from the practice of forced eviction or displacement.³⁷ In fact, eviction frustrates and demoralises the potential work force.

As one commentator points out:

[b]y its very nature, displacement is a disruptive and painful process. Economically and culturally ... it creates a high risk of impoverishment that typically occurs along one or several of the following dimensions: landlessness, joblessness, homelessness, marginalisation, food insecurity, morbidity and social disarticulation.³⁸

6. Litigating for the Right to Adequate Housing

National experiences surrounding the human right to adequate housing, (especially those experiences of developing countries) can be of great help in understanding the true meaning and relevance of this internationally recognised right. A recent and significant legal battle arising out of violation of right to housing in the form of forced eviction of slums by the Government of Bangladesh³⁹ is considered below. This case study will attempt to demonstrate the interrelationship of the right to adequate housing and development.

On 8 August 1999, the police of Bangladesh at the instruction of the Ministry of Home Affairs demolished Titipara basti (slum), one of the largest slums of the Dhaka City with the proclaimed objective of improving the deteriorating law and order situation of the country.⁴⁰ As a direct consequence of this abrupt action, thousands of people became homeless and vulnerable to all other obvious stigmas. The Government evicted them without initiating any rehabilitation scheme that might help them immediately and without adequate notice as required by law.

³⁷ See Centre on Housing Rights and Eviction: *Forced Eviction and Human Rights: A Manual for Action*, Source No.3, Utrecht, COHRE.

³⁸ Cernea *From Unused Social Knowledge to Policy Creation: the Cause of Population Resettlement*, Development Discussion Paper No. 342, (Harvard Institute for International Development, 1990), p.20.

³⁹ See <http://www.bangladeshgov.org>.

⁴⁰ *The Daily Star*, 9 August 1999, p. 1.

Three leading legal aid and human rights organisations, namely, Ain O Salish Kendra, Odhikar and Bangladesh Legal Aid and Services Trust, filed a writ petition⁴¹ filed in the High Court Division of Bangladesh Supreme Court. This writ sought the restoration of the slum dwellers' homes and huts, from which they had been evicted. This declaration of the wholesale eviction was made without legal authority and more importantly, without providing any alternative accommodation.

This was the first time in Bangladesh legal history that the Court had dealt with such an intricate economic and social issue, linked with development. The issue of housing and its relevance in national development paradigm, eviction and state obligation towards this denial of human rights arose from this event.

In its verdict, the High Court Division of Bangladesh Supreme Court vacated the stay proceedings order previously granted in relation to the anti-slum drive of the government and which provided a guideline for the proper rehabilitation of the slum dwellers.

The Court also declared that the government should undertake a master plan or rehabilitation scheme or pilot project for the rehabilitation of the slum dwellers, giving the dwellers the option to either return to their village home or to remain in the urban areas and contribute to the process of national development.

6.1 Views of the Petitioners

An application for enforcement of fundamental rights of slum dwellers as guaranteed under Articles 27, 31 and 32 of the Constitution of the People's Republic of Bangladesh⁴² was moved to proclaim equality before law; the right to protection of law, right to life and personal liberty. This application was done in conjunction with Articles 11, 15 and 19 which include democracy and human rights, the provision of basic needs and livelihood (including housing and equality of opportunity), as fundamental principles of state policy.

⁴¹ *Ain o Salish Kendra, BLAST and Odhikar v. Government of Bangladesh and Others*, Writ Petition No. 3034 of 1999, 19 BLD (HCD), at pp. 488-500.

⁴² The Constitution of the People's Republic of Bangladesh published (as modified up to 31 December 1998) by the Ministry of Law, Justice and Parliamentary Affairs of the Government of Bangladesh. Available at: <http://www.bangladeshgov.org>.

The petitioners' application under Article 102 of the Constitution against the demolition of slums of Dhaka city and the eviction of inhabitants, was contrary to the government's declaration of 1993 Housing Policy. The petitioners asserted that unless a creative programme was taken and slum dwellers were evicted under a phase by phase scheme, the wholesale eviction would not only deny dignity of inhabitants, but would also amount to discrimination which contradicted the notion of sustainable development.

The petitioners were informed that the number of slums in Dhaka City was in total approximately 3007 and the total number of families at 223,724 (out of a population of 1,133,663). The petitioners also mentioned the valuable role the slum dwellers played in the informal urban economic sector and their impact on various government development and social welfare programmes.

Additionally, the petitioner sought an amendment of the content of the original prayer (writ), after the demolition of all existing basties and the eviction of basti people in different parts of Dhaka City, as to why it should not be carried out without following fair and reasonable procedures and in accordance with law. The petitioners also requested the Court declare that the alternative provisions had been made without lawful authority and therefore were to be of no legal effect as they were unconstitutional and in breach of the fundamental rights of the basti people as guaranteed by the Constitution in Articles 27, 31 and 32 thereof.⁴³

6.2 Views of the Government

Recognising the reality that slums dwellers are distressed people uprooted by natural calamities and forced to live in such slums, the government represented by the Attorney General of Bangladesh argued that nobody had the right to occupy, reside or stay on the lands belonging to public authorities as these lands were used in the public's interest. However, over the years many slums have sprung up in the city of Dhaka over public land creating numerous law and order and other problems.

Mostly, the slums are occupied by those who have been uprooted by natural disasters (river erosion, local floods et cetera). The dwellers were forced to pay rent to hoodlums who organise and manage the slums,

⁴³ Note 41 at p. 491.

sometimes for electricity, gas and water which are illegally connected. This in turn causes considerable loss to the national economy.

The slums provide criminals and drug traffickers with a secure and safe place to conceal illegal activities such as arms and drug dealing. The reports published the news of these activities and of the 'mastans' taking shelter in the 'basties.' The Government stated that they and public authorities have asked the slum dwellers to remove their shanties and huts. Some people left these basties, whilst others continue to stay. New inhabitants also add to the detriment and annoyance of other segments of society, thus disturbing the peace and tranquillity of the area.

The government attempted rehabilitation of the distressed and uprooted people who resided in these basties. The Krishi Bank insisted the government conduct a survey of the 32 large basties and list the name of the head of each family. Upon discovering that 50,000 families resided in the basties, the Bank adopted a scheme of rehabilitation named 'Ghore Fera', which was inaugurated by the Prime Minister on 20 May 1999.

This scheme aimed to rehabilitate the uprooted and distressed families who had resided in the slums and provide them with shelter in their respective places of residence. The Bank offered them loans for their earning and occupation accordingly to their ability. The Bank has now rehabilitated 4,000 slum dwellers.⁴⁴

6.3 Observations of the Court

In the slums case, the High Court Division of the Supreme Court clearly tried to strike a balance between social justice and the government's administrative regime. The sole object of the petition was to protect the slum dwellers' rights to life, shelter, livelihood and to physically and socially rehabilitate them. According to the Court, such rights are consonant with the fundamental principles of state policy, which aims to guarantee the fundamental human rights and freedoms, and respect for the dignity and worth of all individuals.

The responsibility of the State to achieve the improvement of the material standard of living of its people demands providing adequate provisions for basic necessities of life including shelter, food, medicine, education and so on. According to the Court, the purposes are to secure the social welfare

⁴⁴ Note 43 at pp. 491- 492.

and justice, to realise the fundamental rights to life and livelihood and to prevent eviction of slum dwellers in ways not in accord with the existing legislative process.⁴⁵

The Court stated that the Constitution, both in the Directive State Policy and in the preservation of the fundamental rights, provides that the State shall direct its policy towards ensuring that citizens have the right to life, living and livelihood. Thus, our country pledges to be bound (within its economic capacity) to attempt to develop and make effective provisions for securing the right to life, livelihood, housing etcetera, as to the fundamental state policy (which is not enforceable), and fundamental rights.

The Court referred to a judgement of the Supreme Court of India where the later held that:

[I]f there were an obligation upon the state to secure the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The state may not by affirmative actions, be compellable to provide adequate means of livelihood or work to the citizens. But any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21.⁴⁶

The Court reminded the state of its obligations to secure citizens' right to livelihood, including shelter and food. The Court also opined that there should be a survey of all the families residing in any particular slum. There should be a master plan or rehabilitation scheme or pilot projects to rehabilitate slum dwellers. They should be given the option either to go and live at their respective rural villages, or to stay in the urban area. If they opt to go to the urban villages to seek rehabilitation, the Bank would provide them with loans for the building of houses and for small scale income generating projects for sustenance. Under this scheme, the State would regularly and properly monitor the rehabilitation process and ensure that the people were fully rehabilitated in a profession. They may also be able to provide food under the Government's VGF project.

⁴⁵ Note 44 at p. 494.

⁴⁶ *Olga Talis v. Bombay Municipal Corporation*, S.C.C 454, (1985); *supra* note 41 at p 495.

Similarly, in case of slum dwellers who do not opt for going to the rural home because of their dislocation by flood and river erosion, natural calamity et cetera, they should be given the choice either to live in slums or to go elsewhere to live. If they choose to stay in slums, they should be rehabilitated bearing in mind the vicinity of their working place and communication facilities. If they are not employed, then the State should initially assist them by erecting huts in any localized area earmarked for rehabilitation and subsequently relocate them to any low cost flats or houses. They should also arrange for vocational training or any work or employment on the basis of the principle 'from each according to his ability to each according to his work by the authority concerned.'

There may be high numbers of old, infirmed, crippled and intellectually disabled people living in the slums, who may be incapable of moving or carrying their livelihood. In such cases, the Government should arrange for their rehabilitation by constructing huts, infirmaries or disability homes and provide food, shelter, medical facilities and clothing as appropriate. Among those who are capable of doing something, they may be given vocational training to enable them to earn their own livelihood in due course.

It is also apparent that the government accepted the petitioners' argument that slum dwellers played an important role in development programmes and informal sectors.

The Court expressly recognised their contribution to the national economy⁴⁷ and called for their rehabilitation in the spirit of the constitutional commitment of Bangladesh towards democracy, socialism (meaning economic and social justice), rule of law, a socialistic society achieved through democratic processes and free from exploitation, fundamental human rights and freedom securing equality and justice.⁴⁸

This case also raised the crucial issue of state obligations to respect and to ensure peoples' right to adequate housing, linking it with the idea of participatory development.

⁴⁷ *Ibid.*

⁴⁸ Note 46 at p. 496.

7. Concluding Remarks

The World Bank and the United Nations initiated a global alliance of cities and their development partners. A challenging ‘Cities without slums’ action plan was launched in December 1999. It aims to improve the lives of 100 million slum dwellers by 2020. In the words of Kofi Anan:

It requires world leaders to commit themselves to, and the international development community to focus on, improving the living conditions of the urban poor. I strongly support the ‘Cities without Slums’ initiative and ask all Member States and to act on it.⁴⁹

No doubt, this massive initiative is reflective of the growing concern towards the right to adequate housing as a development agenda at a global level. The decision of appointing a Special Rapporteur on the Right to Adequate Housing by the Commission on Human Rights in its fifty-sixth session⁵⁰ also emphasises this global endeavour.

The right to adequate housing is universally recognised by the community of nations. All nations without exception have some form of obligation in the shelter sector, as exemplified by their creation of housing ministries or housing agencies, by their allocation of funds to the housing sector, and by their policies, programmes and projects.

All citizens, poor as they may be, have a right to expect their Governments to be concerned about their shelter needs and to accept a fundamental obligation to protect and improve houses and neighbourhoods, rather than damage or destroy them.

The above discussion attempts to show that development is no longer a growth oriented, GDP-based calculation. Rather, it increasingly resembles a people-centred, participatory and sustainable human condition and goal. Adequate housing encompasses a host of rights and is a precondition for human dignity and sustainable development. Forced eviction is a flagrant denial and violation of the right to housing and destroys the essential environment considered *sine qua non* for development programmes and initiatives.

⁴⁹ See generally Note 2.

⁵⁰ Held from 20 March-28 April 2000. Details of session reports and resolutions are available at: <http://www.unhchr.ch/huridocda/huridoca.nsf>.

The High Court Division of the Supreme Court of Bangladesh held that respect for human dignity requires that the eviction of slum-dwellers must be undertaken in conjunction with a government rehabilitation scheme. The Court also noted that, while legally unenforceable, the principles in the "Fundamental Principles of State Policy" are fundamental in governing the country and in interpreting the meaning and content of basic rights. The legal battle for enforcing right to adequate housing was truly a humble attempt towards establishing justiciability of economic, social and cultural rights in Bangladesh. The recent case study from a developing country such as Bangladesh demonstrates this very point.

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