

# Introduction

On 13th June 2007, an international panel was convened to hear evidence presented by residents of the Seven Towers (in the New Lodge area of North Belfast) regarding violations to their human right to adequate housing. This evidence was supplemented by presentations from other individuals and organisations, including the New Lodge Housing Forum, the Committee on the Administration of Justice (CAJ), the Participation and the Practice of Rights Project (PPR), and housing rights lawyers and academics from the National University of Ireland (Galway) and Queen's University Belfast.

The residents had managed, through a process of action research involving the surveying of residents, to establish a quantifiable human rights 'baseline' of outstanding housing rights issues they believed were violating their right to housing as outlined in the International Covenant for Economic, Social and Cultural Rights (ICESCR) and clarified in subsequent UN General Comments.

Uniquely, the residents had developed organic human rights indicators and benchmarks which would enable the measurement of the duty bearers' progressive realisation, or otherwise, of their right to adequate

housing over a twelve month period. In addition to verbal testimonies the panel was provided with documents of supplementary evidence on the day of the hearing which was taken into account when considering our recommendations.

In early July 2007, the panel released preliminary findings to assist and inform the process of engagement between the Seven Towers residents and the Minister for Social Development, Ms Margaret Ritchie, during her visit to the residents. The following report includes our final recommendations.

Immediately prior to the Ministers visit to the residents, a Seven Towers Monitoring Group was set up to oversee the process of the residents monitoring the human rights indicators. The Monitoring Group will submit reports on the progress, or otherwise, of the indicators to the Department for Social Development, the Northern Ireland Housing Executive, and the international panel. The panel may provide comment in response to these reports.

# 1. Government and Agencies as 'Duty Bearers'

The governments of both the UK and Ireland have ratified human rights treaties which oblige them to respect, protect and fulfil a range of human rights standards. Among these are economic and social rights standards, such as the right to adequate housing, and the right to the highest attainable standard of health – both contained in the ICESCR. The ICESCR was ratified by the UK in 1976, and Ireland in 1989, both becoming bound by it in international law.

During the Evidence Hearing, the residents correctly identified the government as the body responsible for realising the right to adequate housing in their community. This extends to the Northern Ireland Executive at Stormont, but also the agencies of government, such as the Northern Ireland Housing Executive (NIHE). The state (i.e. Westminster, the Executive, and all agencies of the state including the NIHE) are not neutral actors with regard to housing issues but 'duty bearers'. The state's role is not to

define what 'the right to adequate housing' means for communities. This is already laid down in international human rights law. Instead the state's role is to take steps to the maximum of its available resources to achieve progressively the full realisation of the right to adequate housing.<sup>1</sup>

To this end, it is the recommendation of the Panel that all policy and legal processes concerning housing should start with the human rights obligation to progressively realise the right to adequate housing in mind. The United Nations and other international bodies have elaborated on the standards required for a state to discharge its obligation to respect, protect and fulfil the right to adequate housing and other economic and social rights. Government and its agencies must act to show that housing rights are being made real, particularly for those in the most deprived communities, and that improvements are being made with regard to the issues the affected group has defined as most important to them.

---

<sup>1</sup> CESCR Article 2(1) "Each State Party to the present Covenant undertakes to take steps... to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present covenant"

## 2. Priority to Groups Living in Unfavourable Conditions

International human rights law includes an obligation on government to give priority to the poor.<sup>2</sup> This requires the active and informed participation of individuals in communities in policy decisions that affect them.

International human rights law also establishes that there must be no discrimination on the basis of social status.<sup>3</sup>

The international human rights requirement that priority be given to those most in need is reflected in key pieces of Northern Ireland legislation – namely section 75(1) of the Northern Ireland Act 1998 which states:

*“A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity –*

- (a) between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation*
- (b) between men and women generally*
- (c) between persons with a disability and persons without; and*
- (d) between persons with dependants and persons without”*

Public authorities in Northern Ireland are therefore under a legal obligation to monitor the impact of their

---

<sup>2</sup> CESCR General Comment 4, the right to adequate housing, Sixth session, 1991, E/1992/23

*11. States must give due priority to those social groups living in unfavourable conditions by giving them particular consideration. Policies and legislation should correspondingly not be designed to benefit already advantaged social groups at the expense of others. ... It would appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant.*

<sup>3</sup> Declaration on Social Progress and Development (1969), proclaimed by UN General Assembly Resolution 2542 (XXIV) on 11 December 1969 states in Part II, Article 10: *Social progress and development shall aim at the continuous raising of the material and spiritual standards of living of all members of society, with respect for and in compliance with human rights and fundamental freedoms, through the attainment of the following main goals: ... (f) The provision for all, particularly persons in low-income groups and large families, of adequate housing and community services.*

policies on the nine groups named in Section 75. According to the Equality Commission, the statutory body charged with overseeing and implementing the statutory duty on public authorities, the available data must be used to “decide whether there is, or is likely to be, a differential or adverse impact on the relevant group”.<sup>4</sup> This involves public authorities carrying out impact assessments on the effect of their policies in promoting equality of opportunity in relation to the above-named nine groups.

Since 1991 government policy in Northern Ireland has operated on the basis of addressing ‘areas and the people in the greatest need’. Evidence presented at the Hearing demonstrated that this has been done through a number of government programmes which placed emphasis on directing resources to meet objective need:

- ‘Targeting Social Need’
- ‘New Targeting Social Need’

Moreover, the St. Andrew’s Agreement contained a commitment to: “*publish an Anti-Poverty and Social Exclusion strategy to tackle deprivation in both rural and urban communities based on objective need and to remedy patterns of deprivation*”.

In November 2006, ‘*Lifetime Opportunities, Government’s Anti Poverty and Social Exclusion Strategy for Northern Ireland*’ was published.

International human rights obligations to afford particular consideration to social groups living in unfavourable conditions underline the validity and authority of the domestic legislation and policy on promoting equality of opportunity and directing resources to the greatest objective. However, the panel is of the opinion that these provisions must be fully implemented. Under paragraph 13 of General Comment No. 4:

*“Effective monitoring of the situation with respect to housing is an obligation of immediate effect. For a*

---

<sup>4</sup> Equality Commission Guidelines, p. 73, para. 3.1.

*State party to satisfy its obligations...it must demonstrate, inter alia that it has taken whatever steps are necessary...to ascertain the full extent of homelessness and inadequate housing within its jurisdiction”.*

Evidence presented at the Hearing indicated that sufficient monitoring may not be taking place within the Northern Ireland Housing Executive to, at the domestic level, ascertain the impact of policies on the groups named in Section 75 of the Northern Ireland Act, and to ensure that resources are being directed to address patterns of deprivation and the greatest objective need. Government must ensure that these domestic provisions are fully implemented. The panel recommends that government ensure that the monitoring procedures currently in place within the NIHE are capable of addressing objective need at small area level and collect information relating to all nine of the named groups under Section 75. It is recommended that the Deprivation Measure data from the Northern Ireland Neighbourhood Information Service (NINIS [www.ninis.nisra.gov.uk](http://www.ninis.nisra.gov.uk)) is used to inform government policy in the area of housing.

### 3. Resources

The panel made the point very strongly at the Evidence Hearing that the availability of resources cannot be used as a valid reason to deny residents the right to adequate housing. The Committee on Economic, Social and Cultural Rights has emphasised:

*“...even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances”<sup>5</sup>.*

The Committee goes on to state that the obligation to monitor the extent of the realisation of economic, social and cultural rights is not eradicated due to a lack of resources. The Committee has also identified that states are under an immediate obligation to enable the exercise of the right to housing “without discrimination”.<sup>6</sup> As diagnosis and knowledge of the situation is the first step towards the realisation of

economic and social rights, including the right to adequate housing, the Panel would like to underline its recommendation that full monitoring be carried out by government to fulfil its domestic and international human rights commitments.

The obligation to devise strategies and low-cost programmes for the promotion of the right to housing is not eliminated by the issues of resource constraints.

Furthermore the Committee has stated that a minimum core obligation exists by which each government is bound. Resource availability can only be a valid reason for the non-realisation of the right to housing if government can demonstrate that it has used every effort to use all resources at its disposal to satisfy the minimum obligations.

The obligation of a State to *fulfil* the right to adequate housing is both positive and interventionary. It is in this category, in particular, that issues of public

---

<sup>5</sup> CESCR General Comment 3, para.11

<sup>6</sup> CESCR General Comment 3, para. 1

expenditure, government regulation of the economy and land market, the provision of public services and related infrastructure, the redistribution of income and other positive obligations emerge should be addressed.

It is the recommendation of the panel that the Seven Towers residents carry out a budget analysis to determine what proportion of money is going to those most in need. Residents should be involved in the allocation and management processes of financial resources when budgets are set for their area. To this end, the following recommendation on the right to information is of the utmost significance.

## 4. Participation

The Committee on Economic, Social and Cultural Rights has acknowledged that fulfilment of the right to adequate housing will entail the fulfilment of other interrelated rights. Among these is the right to freedom of expression laid down in the Human Rights Act 1998<sup>7</sup> and the International Covenant on Civil and Political Rights (ICCPR)<sup>8</sup>. The right to freedom of expression includes the right to ‘seek, receive and impart information’. The Committee has also stated:

*“the right to participate in public decision making – is indispensable if the right to adequate housing is to be realised and maintained by all groups in society”.*<sup>9</sup>

Therefore the panel recommends that government takes immediate steps to fulfil the right of the Seven

Towers residents to participate in all decisions made about social housing development programmes, allocations, maintenance, repair as well as other issues which may affect their housing. The UN Declaration on the Right to Development advises that participation must be ‘active, free and meaningful’<sup>10</sup> and so should go beyond the current ‘consultative’ exercises carried out by public bodies. Development should be understood as an increase in peoples’ well-being, as measured by capacities and choices available. The realisation of the right to development requires the improvement and increase in capacities and choices. “An improvement in the realization of the right to development in that programme implies that the realization of some rights has improved while no other right is violated or has deteriorated”.<sup>11</sup> Furthermore, the right to development requires that

---

<sup>7</sup> Human Rights Act 1998, Article 10

<sup>8</sup> International Covenant on Civil and Political Rights, adopted General Assembly Resolution 2200A (XXI)

<sup>9</sup> CESCR General Comment 4. para 9

<sup>10</sup> Declaration on the Right to Development, General Assembly resolution 41/128, 4 December 1986

<sup>11</sup> Arjun Sengupta, Independent Expert, Fourth Report of the Independent Expert on the Right to Development, Commission on Human Rights, E/CN.4/2002/WG.18/2 (2001). Sengupta has formulated a development vector to measure the right to development by social indicators – such as food, health, education and housing – to represent economic, social, cultural, political and civil rights as well as economic growth (measured in per capita consumption, output and employment). The total development vector only increases if at least one right increases and no rights decrease; if any single right is infringed upon, the vector contracts.

individuals and communities participate in the planning and parameters of proposals that will affect them. Effective participation means that communities have the power to meaningfully affect the outcome of a project through informed consultations.

It is vital that the residents of the Seven Towers are able to participate in bodies with power to make decisions about local affairs and are able to exert influence on the decision making process in a manner which effects outcomes.<sup>12</sup> In this regard, the government must take measures to ensure that barriers to participation, such as poverty and inaccessibility of information, are overcome.<sup>13</sup>

---

<sup>12</sup> Commission on Human Rights, 61st Session, Report of the High Commissioner, Analytical study of the High Commissioner for Human Rights on the fundamental principle of participation and its application in the context of globalisation, E/CN.4/2005/41, 23 December 2004, para. 14

<sup>13</sup> Ibid., para. 16

## 5. Retrogression

Evidence presented at the Hearing indicated that from construction of the Seven Towers complex, conditions in the flats have been allowed to deteriorate. One of the fundamental principles of human rights law is that evidence of retrogression on the part of the state in realising economic and social rights can per se, constitute a human rights violation. The Committee on Economic, Social and Cultural Rights emphasises that governments have an obligation to move as quickly and effectively towards the full realisation of the right to housing. It continues:

*“...any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources”<sup>14</sup>*

Further to this, in relation to the right to adequate housing, the Committee has stated:

*“It would appear to the Committee that a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of accompanying compensatory measures, would be inconsistent with the obligations under the Covenant”<sup>15</sup>*

It is open to the Seven Towers residents group to pursue the possibility that the evidence they collected actually points to retrogression by the government and the NIHE of the right to adequate housing. Further evidence and information would be required to establish that as a result of government policy and practice, housing conditions in the Seven Towers have been allowed to deteriorate. Government would then carry the burden of proof with regard to establishing that their actions had not violated other human rights standards, e.g. the requirement that the right to housing is exercised without discrimination, and that they had fulfilled the obligation to make ‘full use of the maximum available resources.’

---

<sup>14</sup> CESCR General Comment 3, para. 9

<sup>15</sup> CESCR, General Comment 4, para. 11

## 6. Identify Institutional Changes Required

The Seven Towers residents group must be commended for the impressive work they have done in identifying the housing rights issues in their community and committing themselves to measuring progress over a year with regard to these issues. It is the strong recommendation of the panel that while moving forward with these commitments, the Seven Towers residents group also turn their attention to the structural changes that are needed, whether within the Department for Social Development or the NIHE.

The residents have correctly identified the absence of participation, information and accountability as key to the denial of their right to adequate housing, and set indicators to monitor if changes are made in these areas over the next year. The residents must now work on designing institutions, tools or mechanisms that would enable not only the group, but all residents of the Seven Towers, and ultimately all social housing tenants, to participate fully in decisions made about their housing, and to hold those in power accountable for the decisions that they make. This framework of

institutions/mechanisms should be capable of use by other residents when different problems arise. The group should reinforce the human rights obligation of the government and its agencies to be accountable and to facilitate the participation of those affected in decision making processes, by placing an obligation on the NIHE and the Department of Social Development to work with residents in establishing and monitoring indicators and benchmarks on different issues.

For example, the group may decide to enforce the obligation of the NIHE to carry out the human rights monitoring the residents currently are doing. The Committee on Economic, Social and Cultural Rights has stated that governments must:

*“monitor the actual situation with respect to each of the rights on a regular basis and is thus aware of the extent to which the various rights are, or are not, being enjoyed by all individuals...under its jurisdiction”<sup>16</sup>*

---

<sup>16</sup> CESCR General Comment No.1. para. 3

A framework for the selection and monitoring of indicators and benchmarks could be built in to the NIHE Tenants Handbook with results published in the NIHE Tenants Charter, to publicise how the NIHE is performing in meeting targets set by the residents. Additionally, the group may also wish to campaign for a mechanism by which the NIHE is under obligation to disclose all complaints they receive and the action taken in response to it.

The residents should also look broadly at housing issues and get involved in the development plans for North Belfast, to ensure that the next generation of social family housing responds to the needs they have identified.

# 7. Accountability– The Complaints System

The Committee on Economic, Social and Cultural Rights has stated:

*“The right to an effective remedy need not be interpreted as always requiring a judicial remedy. Administrative remedies will, in many cases, be adequate and those living within the jurisdiction of a States party have a legitimate expectation, based on the principle of good faith, that all administrative authorities will take account of the requirements of the Covenant in their decision-making. Any such administrative remedies should be accessible, affordable, timely and effective.”<sup>17</sup>*

It is the recommendation of the panel that the NIHE complaints process moves from a management based complaints system to a human rights based system. Residents of NIHE properties and users of the complaints system should be involved in both the design and evaluation of a complaints system which is accessible, affordable, timely and effective.

Further to this, the residents may wish to widen out their focus and monitor other mechanisms of accountability, e.g. what impact politicians, ombudsmen, judges, complaints processes have and monitor their contributions to working towards the progressive realisation of the right to housing in their community.

---

<sup>17</sup> CESCR General Comment No.9. para. 9

# Biographies of International Panel members:

**Bruce Porter** is a human rights consultant, researcher and advocate for poor people's human rights in Canada and internationally. He is the Director of the Social Rights Advocacy Centre and the Co-ordinator of the Charter Committee on Poverty issues, (CCPI) a national committee of low income advocates and human rights experts dedicated to promoting and defending the rights of poor people in Canada. He is currently co-directing a five year research programme in 'social rights accountability,' funded by the Social Science and Humanities Research Council Community University Research alliance. The project brings together five universities and five NGOs across Canada to consider ways of ensuring effective participatory mechanisms through which affected constituencies can hold governments accountable to social rights.

Bruce has represented claimants in a number of precedent-setting human rights cases in Canada, challenging systematic discrimination against poor people and other disadvantaged groups in housing. Bruce has also spearheaded important initiatives at the UN Committee on Economic, Social and Cultural

Rights for more effective NGO participation in periodic reviews.

Bruce has published a number of articles on social rights, poverty and housing, including a chapter on the right to adequate housing in Canada for the forthcoming book *National Perspectives on Housing Rights*. He has recently provided expert evidence in a number of important cases in Canada dealing with social and economic rights and discrimination against poor people.

Bruce gave the keynote address at the Participation and the Practice of Rights Project conference in March 2004 "*Making connection – owning outcomes*" in the Carrickdale Hotel, Co. Louth.

**Mr. Odindo James Opiata** (LLB and Advocate of the High Court of Kenya) is the Director of Hakijamii Trust, a national human rights organisation working on economic and social rights advocacy with grassroots organisations. The Hakijamii Trust has assisted in the formation of two coalitions of

grassroots organisations in Nairobi and Kisumu, the largest and third largest cities in Kenya respectively.

Mr. Opiata works to promote land and housing rights, and to guarantee the right to adequate housing for the urban poor in particular. He has litigated on Economic, Social and Cultural Rights at a national level over the past five years. Recent campaigns include the mobilisation of 1,000 slum dwellers to file an application at the High Court. He also facilitated a campaign called the 'One Million and One', whereby signatories expressed their support for the constitutional review process. He writes that such actions have "once again reaffirmed my faith in people's power."

**Leticia Osorio** (MA) is a Brazilian lawyer active in housing rights issues for more than 15 years. She has a Masters in Regional and Urban Planning and is currently doing her Doctorate in Human Rights Law at the University of Essex, UK. She has worked with the Governments of the City of Porto Alegre and the State of Rio Grande do Sul, Brazil, the latter of which has gained international recognition for its progressive

social policies and effective engagement with disadvantaged communities. She is the legal officer of the Americas Programme and a regional researcher of the Centre on Housing Rights and Evictions (COHRE). As member of the United Nations Advisory Group of Forced Evictions she has worked with States, non governmental organizations and social movements to prevent evictions and mediate land conflicts worldwide.

