

The human right to adequate housing in Timor-Leste

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Why is a secure place to live important?

- to an individual
- to a family
- to a community
- to a society



Every human being has a right to adequate housing:

=> "right of all to a secure place to live in peace and dignity"

=> a right "ensured to all persons irrespective of income or access to economic resources"

General Comment 4

SUBSTANCE OF THE RIGHT TO ADEQUATE HOUSING

- => SECURE LAND TENURE
- => AFFORDABLE
- => HABITABLE
- => AVAILABILITY
of services, materials, facilities and infrastructure
- => ACCESSIBLE
to all including women, children, disabled, aged, etc.
- => LOCATED
near facilities and in safe environment
- => CULTURALLY ADEQUATE

BASIS OF THE RIGHT TO ADEQUATE HOUSING

- **Moral Basis**
 - => The need for secure shelter is fundamental to being human
 - => The right to housing is linked to the right to dignity and the right to life
 - => Adequate housing is a building block for a stable community
- **Legal Authority**
 - => International Law and Standards
 - => National Law and Standards

INTERNATIONAL LAW AND STANDARDS

- Universal Declaration of Human Rights (UDR)
'basis of subsequent human rights treaties'
- Treaty Law:
Ratified Treaties including Covenants, Charters and Conventions, binding on parties
e.g. International Covenant on Economic, Social and Cultural Rights (ICESCR)
e.g. International Covenant on Civil and Political Rights (ICCPR)
- Other ('soft law') instruments:
e.g. U N Committee on Economic, Social and Cultural Rights: General Comments 3, 4 and 7
(IMPORTANT WEBSITES: www.bayefsky.com or www.unhchr.ch/housing/i2echou.htm)

Other international legal sources:

- CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women (1979)
- CRC: Convention on the Rights of the Child (1989)
- Convention Related to the Status of Refugees (1951)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- CERD: The Convention on the Elimination of All Forms of Racial Discrimination (1969)
- ILO Convention No. 117 Concerning Social Policy (Basic Aims and Standards) (1962)
- Declaration on the Right to Development (1986), adopted by U N General Assembly Resolution 41/128

Article 25(1) of the Universal Declaration of Human Rights (1948)

“Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, **housing** and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

Article 11(1) of the International Covenant on ESC Rights (1966)

“The State parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and for 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.”

General Comments

The Committee on Economic, Social and Cultural Rights (CESR) monitors the compliance of States parties with the ICESCR. The Committee has interpreted Article 11(1) of the Covenant in detail in:

General Comment No.4 on the right to adequate housing (1991)

General Comment No.7 on the right to adequate housing – forced evictions (1997)

Also see **General Comment No.3** on the nature of the States parties obligations (1990)

States are obliged to...

- **RESPECT**
The government may not interfere with or violate housing rights
- **PROTECT**
The government must actively prevent others from interfering with or violating housing rights
- **FULFIL**
The government must actively take steps to realise the housing rights of everyone – with priority to marginalised groups. It must make laws, allocate budgets, create institutions, launch programmes, monitor progress



Obligations (continued 1)

- States have to take deliberate, concrete and targeted steps towards fulfilling the rights
- Though full realisation of the rights will take time (“progressive realisation”), steps must be taken “to the maximum of available resources”
- Certain of the obligations are immediate. States must:
 - => take steps
 - => prioritise “minimum core obligations”
 - => do not discriminate
 - => prioritise the most vulnerable

Vulnerable groups include:

- Women
- Children
- The elderly
- The poor
- Occupied populations
- Refugees, asylum seekers and internally displaced people (IDPs)
- Occupied populations
- Victims of natural disasters

Obligations (continued 2)

STATES HAVE TO REPORT ON COMPLIANCE TO UN TREATY BODIES:

1. State reports to committees.
(Timor-Leste Report to Committee on Economic, Social and Cultural Rights overdue - 30 June 2005)
2. Universal Periodic Review
(Timor-Leste due to report to 2011)

ALSO: Optional Protocol Complaint Procedures
(CCPR, CEDAW, CRC)
(CESCR?)

NOTE: Potential for civil society involvement

TENURE SECURITY

- Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, customary land tenure, emergency housing and informal settlements, etc.
- “Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement.”
- “Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats”

General Comment 4

FORCED EVICTIONS

- Forced Evictions are permitted only in truly exceptional circumstances
- Absolutely the last resort
- Under strictly enforced conditions
- After genuine consultation, consideration of alternatives, and compensation

Forced Evictions

“The 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. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Human Rights Covenants.”

General Comment 7



“Evictions should not result in individuals becoming homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State Party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”

General Comment 7

Evictions: States must...

- Ensure that all feasible alternatives are explored in consultation with the affected persons
- Provide legal remedies or procedures to those who are affected by eviction orders
- Ensure that all the individuals concerned have a right to adequate compensation for any property that is affected
- An opportunity for genuine consultation with those affected
- Adequate and reasonable notice for all affected persons prior to the scheduled date of eviction
- Information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected



National Law and Standards

- National Constitution
- Laws
- Ratification of International Treaties

PLUS:

=> *Monitoring and compliance via police, courts, commissions*

=> *Implementation through enabling policies, programmes and budgets*

Examples of national laws

- Constitutional law
- National laws
- Housing acts
- Rent and rent restriction legislation
- Urban reform laws
- Security of tenure legislation
- Civil and criminal codes
- Land use, zoning and agrarian laws
- Planning laws and regulations
- Building codes and standards
- Laws relating to inheritance rights for women
- Legal framework to support customary tenure
- Land acquisition and expropriation acts
- Environmental standards
- Etc.

INTERNATIONAL LAW AND TIMOR-LESTE

CONSTITUTION OF THE REPUBLIC OF TIMOR-LESTE *SECTION 9: INTERNATIONAL LAW*

“1. The legal system of East Timor shall adopt the general or customary principles of international law.”

“2. Rules provided for in international conventions, treaties and agreements shall apply in the internal legal system of East Timor following their approval, ratification or accession by the respective competent organs and after publication in the official gazette.”

“3. All rules that are contrary to the provisions of international conventions, treaties and agreements applied in the internal legal system of East Timor shall be invalid.”

RATIFICATION HISTORY OF TIMOR-LESTE

TREATY	RATIFICATION	INTO FORCE
CERD	16-Apr-03	16-May-03
CCPR	18-Sep-03	18-Dec-03
(OPT2)	18-Sep-03	18-Dec-03
CESCR	16-Apr-03	16-Jul-03
CEDAW	16-Apr-03	16-May-03
(OPT)	16-Apr-03	16-Jul-03

CONSTITUTIONAL PROTECTION OF THE RIGHT TO ADEQUATE HOUSING AND RELATED RIGHTS

HOUSING

Section 37: Inviolability of home and correspondence

"1. Any person's home and the privacy of his or her correspondence and other means of private Communication are inviolable, except in cases provided for by law as a result of criminal proceedings"

Section 44: Freedom of movement

"1. Every person has the right to move freely and to settle anywhere in the national territory."

Section 58: Housing

"Everyone has the right to a house, both for himself or herself and for his or her family, of adequate size that meets satisfactory standards of hygiene and comfort and preserves personal intimacy and family privacy."

LAND AND PROPERTY

Section 141: Land

"Ownership, use and development of land as one of the factors for economic production shall be regulated by law"

Section 54: Right to private property

"1. Every individual has the right to private property and can transfer it during his or her lifetime or on death, in accordance with the law"

"2. Private property should not be used to the detriment of its social purpose"

"3. Requisitioning and expropriation of property for public purposes shall only take place following fair compensation in accordance with the law"

"4. Only national citizens have the right to ownership of land"

OTHER RELEVANT PROVISIONS (1)

Section 16: Universality and Equality

"1. All citizens are equal before the law, shall exercise the same rights and shall be subject to the same duties."

"2. No one shall be discriminated against on grounds of colour, race, marital status, gender, ethnical origin, language, social or economic status, political or ideological convictions, religion, education and physical or mental condition."

Section 17: Equality between women and men

"Women and men shall have the same rights and duties in all areas of family, political, economic, social and cultural life."

OTHER RELEVANT PROVISIONS (2)

Section 18: Child protection

"1. Children shall be entitled to special protection by the family, the community and the State, particularly against all forms of abandonment, discrimination, violence, oppression, sexual abuse and exploitation."

"2. Children shall enjoy all rights that are universally recognised, as well as all those that are enshrined in international conventions commonly ratified or approved by the State."

"3. Every child born inside or outside wedlock shall enjoy the same rights and social protection."



OTHER RELEVANT PROVISIONS (3)

Section 2: Sovereignty and constitutionality

“4. The State shall recognise and value the norms and customs of East Timor that are not contrary to the Constitution and to any legislation dealing specifically with customary law.”

Section 72: Local government

“1. Local government is constituted by corporate bodies vested with representative organs, with the objective of organising the participation by citizens in solving the problems of their own community and promoting local development without prejudice to the participation by the State.”

QUESTION:

If the people of Timor-Leste have a right to adequate housing;

... and if the Government of Timor-Leste has obligations to respect, protect and fulfil that right

1. *What can citizens and communities do to contribute to the realisation of the right to adequate housing.*

2. *And what are the reciprocal obligations of the citizens of Timor-Leste?*

