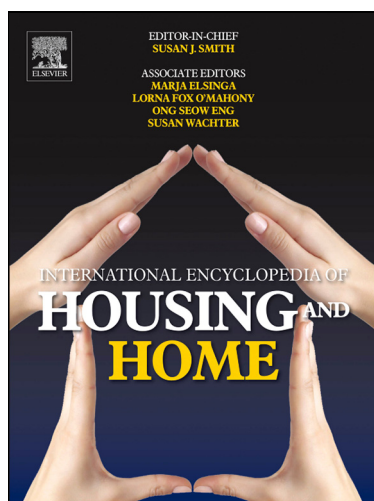


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Policies to Address Homelessness: Rights-Based Approaches

I Anderson, University of Stirling, Stirling, UK

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Glossary

Homeless To be homeless: state of lacking adequate shelter; state of lacking a secure, adequate, affordable private space from which to conduct one's life. Note that definitions vary according to social and cultural context as well as national and international legal frameworks.

Homelessness Recognised social phenomenon of identifiable population lacking adequate housing; field for welfare policy intervention by state and non-state agencies in local, national, and international spheres.

Justiciable right to housing Right to housing which is enshrined in law and legally enforceable through the court system in a nation state by individuals or households lacking adequate accommodation.

Social right to housing Right to housing conveyed through a national constitution, a national welfare system, or an international treaty which acknowledges housing as a fundamental human right for those subject of such a constitution, welfare state, or international treaty, and where states seek to ensure housing as a human right but do not necessarily guarantee an individual right enforceable at law.

Introduction

While the term housing can have a somewhat technical definition referring mainly to adequacy of shelter from the elements, the English word 'home' conveys more than just a physical dwelling. The home is a social space from which to conduct life's activities, and from which occupants seek security and comfort in terms of both living accommodation and the surrounding environment. The costs of housing are crucial to households' ability to afford and maintain a home along with other aspects of desired standards of living. Consequently, even a literal interpretation of homelessness as 'being without a home' suggests that this implies more than just lacking adequate shelter, but that a person, family, or household does not have a secure, adequate, affordable, private space from which to conduct their life. The term homelessness is also subject to common-sense, cultural, and legal definitions ranging from absolute destitution to definitions which are relative to the norms of different nations and societies. Edgar and Meert (2005) developed an operational typology of homelessness based on four main conceptual categories: rooflessness, houselessness, insecure housing, and inadequate housing.

Across the globe, housing is provided and consumed through a combination of market mechanisms, state provision/intervention, third sector/nongovernment organisation (NGO) provision, and self-help/informal solutions. In responding to homelessness and the wider housing needs of the population, the housing policies of nation states reflect a range of influences such as demography, market forces, and intervention strategies. To an extent national policies and legal frameworks will reflect

prevailing political ideologies although housing systems (e.g., in terms of the overall balance of tenure or finance mechanisms) take time to respond to political change. That said, state responses to homelessness can be influential and can range from 'rights-based' or legal approaches to 'softer' policy instruments such as offering financial incentives to local agencies to assist homeless households or otherwise encouraging 'enabling' approaches at the local level. Households may not explicitly consider the need to claim a 'right' to housing, especially if they are readily able to access suitable accommodation through a market mechanism. However, those who face severe constraints in the market sector or who face a homelessness crisis may well rely on the state to assist them in meeting their housing needs. In such circumstances the question of a right to housing becomes much more pertinent.

It is important to acknowledge that the concept of housing rights is a broad one, with varying potential interpretations of different possible types of 'rights' to housing. For example, Bengtsson (2001) distinguished between 'legalistic' rights to housing associated with more selective national housing policies and 'social' rights to housing associated with more universal housing and welfare policies. The two main examples explored in this chapter reflect the legalistic or 'justiciable' approach where housing rights can be enforced at law, which is quite different from the frameworks of rights contained in international treaties (also discussed below) which cannot necessarily be enforced at law within individual signatory states. Nonetheless, housing as a social or human right is important in that it recognises the basic need of human beings not just for shelter from the elements but also for

accommodation which is safe, secure, affordable, and sufficient for the needs of the household. While international agreements, such as United Nations conventions and European treaties, will have some influence over the actions of nation states, it is important to examine the approaches of individual countries to uncover the existence (or otherwise) of rights-based responses to homelessness. Such an approach is advocated by the European Federation of National Homelessness Agencies (FEANTSA, 2008), which campaigns for a rights-based approach to tackling homelessness across the European Union (EU).

Rights-Based Responses to Homelessness: Examples from Europe

In Mandić's (2006) review of homelessness policies in the EU, France was identified as having introduced a right to housing in 1982, which was further enhanced in the Besson Act of 1990, although difficulties in implementation were acknowledged. Beyond this, Mandić concluded that the approaches of other EU member states to resolving homelessness appeared to demonstrate 'uniqueness' rather than identifiable patterns. Fitzpatrick and Stephens' (2007) study of 11 OECD countries also concluded that the United Kingdom was unusual in having a legislative basis for legally enforceable rights for homeless households. Notably, the UK system helped homeless people into settled/secure accommodation, compared to, say, Germany, where legal duties were only for the provision of temporary accommodation. In Sweden, Poland, and Hungary, limited rights for emergency accommodation for some homeless groups were identifiable and social welfare legislation assisted homeless people in other countries. Nevertheless, across the 11 countries, there was wide acknowledgement of the need for at least temporary accommodation and social support as part of responses to homelessness (Fitzpatrick and Stephens, 2007). Different strategies were evident in Central European states which had undergone post-1990 social, economic, and political transitions to EU membership, compared to those nations which had developed capitalist welfare states since the post-1945 period. Below, the examples of France and the Scottish jurisdiction within the United Kingdom are considered in more detail as both nations introduced enhanced, rights-based approaches to homelessness in the post-2000 period.

Scotland – Widening the Homelessness Safety Net

From 1977, a legal framework in place across England, Scotland, and Wales placed duties on local government (local authorities) to take action where individuals

or households presented themselves as homeless or threatened with homelessness (extended to Northern Ireland in 1988). Homelessness was defined as lacking accommodation or being prevented from occupying accommodation, for example, because of a threat of violence (adapted from Fitzpatrick et al., 2009: xiii). The legislation did not, however, treat all households equally as local housing authorities were required to apply four 'tests' to applications for assistance:

1. Is the household 'homeless' as defined in the legislation?
2. Is at least one member of the household in 'priority need' of accommodation, defined as:
 - a. Household with children of school age or an expectant mother?
 - b. Households 'vulnerable' due to old age, health or disability, or other special reason?
 - c. Household homeless because of an emergency such as a fire or flood?
3. Has the household become homeless 'intentionally' (by deliberate act or omission which led to homelessness)?
4. Does the household have a 'connection' with the local authority to which they have presented (through residence, employment, or family)?

If the authority judged that the household circumstances met all four tests (although a duty to accommodate arises irrespective of Test 4, local connection determined which local authority would have to provide long-term accommodation for the household), then a duty to provide accommodation would arise, and would generally be fulfilled by offering housing in the local authority's own rented housing stock (council housing) or by referral to an alternative social landlord (housing association or registered social landlord).

The process of political devolution instituted by the United Kingdom's New Labour Government elected in 1997 created a separate Scottish Parliament in 1999, enhancing the scope for differential housing policy and legislation in Scotland, compared to the rest of the United Kingdom. Recognising that the 1977 homelessness legislation was out of date, the New Labour-led coalition Executive set up the Homelessness Task Force to review the nature of homelessness in Scotland and to make recommendations for more effective responses. The task force published an interim report in 2000 and a final report and action plan in 2002 (Homelessness Task Force, 2000, 2002). Recommendations were incorporated into law in the Housing (Scotland) Act 2001 and the Homelessness, etc. (Scotland) Act 2003.

Essentially, the four tests of the 1977 legislation were to be reduced to one test – is the household homeless? Perhaps the most significant recommendation for legislative change was the phasing out of the differential

treatment of households according to whether they were considered to have 'priority need' or not. In essence this recognised, after a long campaign that housing is a fundamental need of all households and that the distinction between priority and non-priority status was unfair and ultimately ineffective as separate policy initiatives (e.g., 'Rough Sleepers Initiatives') had been required for those not supported by the main safety net (Anderson, 2007). Although not explicitly announced as a 'right to housing', the new measures would mean that by 2012 there would effectively be a duty on local authorities to ensure that all households in Scotland had some form of accommodation. In 2003 the Centre on Housing Rights and Evictions (COHRE, an international human rights NGO) awarded the Housing Rights Protector Award to the Scottish Executive for this new homelessness legislation in recognition of its contribution to protecting human rights and safeguarding human dignity (Goodlad, 2005). Further, in 2009, the United Nations Committee on Economic, Social and Cultural Rights recommended that the Scottish homelessness framework be adopted throughout the United Kingdom (Bowcott, 2009).

After the 2007 Scottish Parliament elections, the Scottish National Party (SNP) formed a minority government. However, implementation of the new homelessness framework continued, irrespective of the changed political leadership in Scotland. By the end of the administrative year 2008–09, Scottish local authorities reported being more than 80% on the way to achieving the 2012 target of abolishing the priority/non-priority need distinction, albeit that there was variation in performance across the 32 authorities (Scottish Government, 2009).

Despite a public commitment to meeting the 2012 target to treat all homeless households equally, the SNP Government subsequently implemented measures to change the means by which local authorities could discharge their duties to some homeless households to include private, as well as public/social, sector tenancies (Scottish Government, 2010). While this private sector alternative represented a practical response to the evident pressure on the social housing sector, questions remained as to the suitability of the Scottish privately rented sector to provide adequate long-term solutions to homelessness. For example, Scottish social housing tenancies incorporated a wider package of 'tenants' rights' (e.g., on repairs, exchanging homes, tenancy succession, and, most importantly, protection from eviction) which did not apply in the private sector. Moreover, private sector tenancies remained generally more expensive than the social sector, but with less favourable housing allowance regulations (Anderson, 2009). Consequently, the effectiveness and sustainability of the Scottish private rented sector's potential contribution to the key policy goal of a right to housing for all by 2010 would require close scrutiny.

France – Introducing an Enforceable Right to Housing

In France, the long-standing legislative response to housing was also modernised in the post-2000 period as documented by Loison (2007). France recognised the right to housing as a social right enshrined in the Constitution of 1946 and reaffirmed in subsequent laws. Notably, the Besson Act of 1990 provided that guaranteeing the right to housing was a duty of solidarity incumbent upon the whole nation. The difficulty was that the right to housing was not legally enforceable as it gave no entitlement to relief through the courts for those who could not find somewhere to live (Loison, 2007). Rather, the phrase 'enforceable right to housing' (*droit au logement opposable*, abbreviated to DALO in the French language) dated from a 2002 report of the HCLPD (Haute Comité pour le Logement de Personnes Défavorisées, 'Homelessness Housing Committee'), which, as in Scotland, was the culmination of a period of substantial review. Loison characterised the enforceable right to housing as the difference between accepting the 'best efforts' of the state to respond to homelessness, and implementing a 'performance obligation' "under which central government's responsibility for guaranteeing the right to housing would be devolved to local authorities and homeless persons would have official forms of redress first by mediation and then through the courts" (2007: 186–187).

During this period of policy review, voluntary homelessness agencies were also campaigning for an enforceable right to housing. In 2005, public outrage at a series of fatal fires in multiple occupied buildings in Paris led to a private member's bill to introduce an enforceable right to housing, and, although it was not successful, a debate over the issue continued among the main political parties. Combined with the fire fatalities, in 2006 the emergence of 'tent cities' occupied by homeless people galvanised high-profile pressure group action by the voluntary organisation Les Enfants de Don Quichotte, resulting in a great deal of media attention and a campaign for action which spread from Paris to other French cities. Such media pressure was particularly effective in securing government action with plans to introduce an enforceable right to housing announced in President Chirac's New Year address, and passed into law in Bill No. 2007-290 (Loison, 2007). The key legislative measures of DALO included:

1. The state guaranteed the right to housing in the Besson Act.
2. From 1 December 2008, the DALO would cover the six highest-priority categories of applicants: roofless people, tenants facing eviction, people in temporary accommodation, people in substandard or unfit accommodation, people with at least one dependent child living in housing not regarded as decent, and people with a

disability or a disabled dependent whose housing is not regarded as decent.

3. From 1 January 2012, the DALO would be extended to all other people who qualify for social housing but had been waiting for an abnormally long time.

4. All groups could take their case to a mediation committee and then an administrative appeal tribunal and the court would be able to order the state to house the applicant.

The DALO was supplemented by measures to increase the supply of social housing and an enhanced plan of action on homelessness designed to ensure appropriate action to move people from temporary to settled accommodation and to provide required support for resettlement. Early evaluation of implementation of DALO (Loison-Leruste and Quilgars, 2009) suggested that the number of people helped was less than expected (just over 4000 by October 2008) but that it had raised the profile of homelessness on the policy agenda and provided better information to help ensure more effective practice in the future.

Housing Rights and the Effectiveness of Rights-Based Responses to Homelessness

A number of similarities are evident in the rights-based responses to homelessness in Scotland and France above. Both represented modernised frameworks which emerged from long-standing and evolving legislation influenced by civil society as well as the state. Both demonstrated socially inclusive approaches through a progressive widening of the characteristics of groups entitled to be housed in the event of homelessness, with the same target implementation date of 2012. The French approach was most explicitly introduced as an 'enforceable right to housing', while the rights-based approach was more implicit in the Scottish model. Ultimately, the effectiveness of both programmes will depend on the capacity of homeless households to claim or enforce these new legal entitlements to housing and the capacity of the national housing systems to adequately meet need.

In the Scottish case, legal provisions required local authorities to review cases where an applicant was not satisfied with the decision made. If the applicant was still not satisfied, the decision could be challenged in a court of law. Effectiveness was also being monitored through annual reporting to the central government of the progress towards the 2012 target. In France, a key component of the DALO was the right to apply to an administrative tribunal for legal relief against the authorities if homeless applicants had been waiting for housing for an abnormally long time and had not been offered suitable/affordable permanent housing. If the decision went against the state, it would have to compensate

the complainant (Loison, 2007). However, whereas in Scotland the responsibility for implementation rested clearly with local government authorities, the French system was much more complex, with the involvement of government at central, regional, and departmental levels, as well as district associations and local authorities. This made the implementation of centralised policies extremely challenging in practice. Nonetheless, the DALO act also provided for annual monitoring and reporting, including quantifying the number of unsatisfied housing applications.

The two case studies can be further compared with the wider concept of housing rights as human rights (Kenna, 2005). The two principal instruments of the Council of Europe (47 member states) which relate to housing rights are the European Social Charter (and revised charter) and the European Convention on Human Rights and Fundamental Freedoms (Kenna, 2005: 31–54). The European Social Charter was established in 1961 and is gradually being replaced by the Revised European Social Charter (RESC) of 1996. Under Article 31 of the RESC everyone has a right to housing, requiring nation states to take measures to promote access to housing of an adequate standard, to prevent and reduce homelessness with a view to its gradual elimination, and to make the price of housing accessible to those without adequate resources. Regular national reports on compliance are submitted to the Council of Europe's Committee of Social Rights (CSR). The Committee of Ministers can make a recommendation to a state asking it to change the situation in law and/or practice and reports published by the committee offer benchmarks for national housing and homelessness policies. As at February 2009, however, only 25 of the 47 member states had fully ratified and implemented this charter (Council of Europe, 2009). Under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), living conditions have been taken into account in cases concerning human dignity and the convention recognises that a home is more than a dwelling and that human rights and fundamental freedoms require respect for 'home' and private/family life. The ECHR has been ratified by all 47 member states of the Council of Europe, applies to all persons in a state (not just its citizens), and has strong enforcement mechanisms (Kenna, 2005).

In contrast, the EU approach (27 member states) has been to develop common governance arrangements for social protection, rather than legal rights, and housing has never been fully recognised as an area of competence at EU level. For example, instruments to support social inclusion such as national action plans (NAPs) make only superficial reference to housing (Kenna, 2005). Nevertheless, the 1990s and 2000s saw gradual recognition of the complex links between housing and other aspects of social exclusion/social protection which the EU sought to address. A 1997 resolution of the European Parliament expressed the desire for an EU

housing policy, calling for the right to decent and affordable housing for all; in 1999 the Committee of the Regions raised the importance of homelessness issues; and EU texts on human dignity implicitly recognise the right to adequate accommodation as a fundamental human right. There are procedures for the discussion of housing issues through annual meetings of EU housing ministers. Homelessness tends to be discussed as a social inclusion issue whereas more general housing issues are held to be largely a market function, where concerns are more with consumer rights and property rights than with fundamental rights to housing (Kenna, 2005). Nevertheless, the EU does respect the United Nations Universal Declaration of Human Rights (see below) and EU members Belgium, Finland, the Netherlands, Portugal, Spain, and Sweden have all incorporated the right to housing into their national constitutions (even though it may not be explicitly legally enforceable as implemented in France).

At the global level, the most widely applicable human rights instruments are those under the auspices of the United Nations (150 member states), and nation states ratifying UN covenants must ensure compatibility between their national laws and their international duties. Article 25 of the 1948 Universal Declaration of Human Rights states that

Everyone has the right to a standard of living adequate for the health and well-being of himself and of 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 (Kenna, 2005: 14; emphasis added).

Kenna (2005) further documents that Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) refers directly to the right to housing as part of the right to an adequate standard of living. This covenant has been ratified by 150 states and requires signatories to “take appropriate steps to ensure realisation of this right.” General Comment 4 of the ICESCR further specifies required elements of housing policy, including

- legal security of tenure;
- availability of services, materials, and infrastructures;
- affordable housing (such that housing costs do not threaten other needs being met);
- habitable housing;
- accessible housing (including for groups with specific needs);
- location (environment and other services); and
- culturally adequate housing.

In theory, any person not enjoying these entitlements could claim that they do not enjoy the right to housing as enshrined in international human rights law (Kenna, 2005).

General Comment 7 requires that forced evictions are prohibited unless they are carried out fully in accordance with national law and international covenants on human rights. Finally, wider UN anti-discrimination instruments apply equally to housing as to other areas of policy.

Conclusion

Quality of housing outcomes reflects choice and constraint within any nation or society, and sometimes people may have no effective choice, resulting in their becoming homeless. For those facing the most difficult circumstances, a rights-based response to homelessness may offer an enforceable or justiciable procedure which actually empowers individual households to resolve their housing situation (Fitzpatrick, 2009). Housing rights as human rights conferred by the international conventions discussed above may be closer to a social form of housing rights, which, if effectively implemented, may well contribute to the prevention of homelessness and so avoid the need for a responsive solution. For example, DeDecker (2004) argued that Belgium’s high degree of social protection resulted in it having among the lowest poverty levels in the world even though intervention in the housing market was weak. Of course the two approaches are not mutually exclusive. O’Sullivan (2008) has argued that the negotiated, consensual approach to developing a national strategy to combat homelessness in Ireland may prove more effective than an ‘adversarial’ (p. 229) legal rights approach. However, the extended rights-based legal framework in Scotland discussed in this chapter also emerged from a consensus approach through the Homelessness Task Force, and the DALO in France was implemented in conjunction with broader social inclusion measures.

As noted earlier, Bengtsson (2001) has argued that in more universalistic welfare states, social rights may be more appropriate and effective than justiciable rights. However, the introduction of social housing rights may be particularly challenging to secure in nation states where this would require fundamental shifts in national welfare provision. In such circumstances, enforceable housing rights may offer a short- to medium-term shift, which demonstrates some commitment to a rights-based response to homelessness and tackles the most urgent aspects of the problem. The direct transferability of the Scottish and French frameworks to other national contexts would not be straightforward, but they could perhaps be drawn upon as aspirational models, which demonstrate that policy can change and nation states can implement rights-based responses to homelessness.

At supra-national level, systems are in place to monitor states’ performance in meeting housing rights obligations, for example, through the United Nations Committee on Economic, Social and Cultural Rights, the Council of

Europe's Committee of Social Rights, the European Union Social Protection Committee, and the European courts. These bodies provide at least some remedy against contraventions of international instruments, indicating that international human rights instruments can be used to address the development of human and housing rights within nation states. However, the question remains as to how accessible they are to individual households, as opposed to requiring substantial legal or advocacy support in order to successfully bring a complaint.

Although this article has argued for enforceable, rights-based responses to homelessness, the importance of broader housing and social policies to avoiding and alleviating homelessness is very much acknowledged. Neither universalistic social rights nor fully enforceable legal rights to housing may yet be achievable for all nation states, but the ideal of a well-developed rights-based approach to homelessness within a wider social system which promotes adequate housing and social protection for all is a goal worth setting.

See also: Cost Analyses of Homelessness: Limits and Opportunities; Ethnographies of Home and Homelessness; Homelessness: Causation; Homelessness: Definitions; Human Rights and Housing; Policies to Address Homelessness; Rights to Housing: International Instruments; Rights to Housing Tenure; Social Exclusion and Housing; Social Policy Approaches.

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