



Urban Law Day 2018

University of London Institute of Advanced Legal Studies

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Background

Urbanization is one of the most significant trends of the 21st Century with the global urban population growing from 732 million in 1950 to 4 billion in 2017. This number is expected to nearly double by 2050. The rapid growth of urban areas has increased economic productivity and provided greater opportunities and better quality of life for many. Cities create wealth, generate employment and drive human progress by harnessing the forces of agglomeration and industrialization as well as offering greater societal freedoms. However, despite these achievements, urbanization has also been associated with several negative effects including generation of multiple forms of inequality, exclusion and deprivation. Many cities have struggled to integrate migrants and refugees while women, the elderly, the youth, persons with disabilities, indigenous peoples and internally displaced persons continue to face marginalization.

Furthermore, there has been an increase in slums and informal settlements as well as a growing population of homeless persons in various parts of the world.

In light of both the opportunities and challenges presented by urbanization and the need to promote inclusivity, participation, and equality of outcomes within urban areas, "Human Rights in Cities" was chosen as the theme of the 5th Urban Law Day. The event was held at the Institute of Advanced Legal Studies (IALS) - University of London on 13th July 2018 and was jointly organized by IALS and UN-Habitat. The objective was to facilitate discussions and exchange of views on the human rights commitments within the New Urban Agenda, the challenges facing cities and how they have impeded the realization of these rights. It also included the role of law and a discussion on how human rights can be promoted in urban areas.

Urban Law Day (Institute of Advanced Legal Studies, 13 July 2018)

Human Rights and Governance within the New Urban Agenda

Human rights are important as they set minimum standards required for people to live in freedom, equality, and dignity. They protect individuals and communities from the exercise of arbitrary power by the government and other private entities and allow them to freely make decisions and express themselves. Human rights entitle people to certain social goods and in doing so, designates duty bearers mandated to fulfil them.

In the urban context, human rights serve four main functions. First, they lay out the entitlements due to urban dwellers. Housing, health services, safe and affordable water and sanitation, security, and recreation are examples of this function of human rights. Second, they establish the values that ought to guide the treatment accorded to individuals in urban environments. Human rights emphasize on respect for human dignity, freedom, equality, non-discrimination, inclusivity and the realization of the potential of all human beings. Third, they empower urban dwellers to participate in the governance and management of urban areas in addition to enabling them to seek accountability. For example, the right to vote enables them to choose their leaders while the freedom of expression allows them to communicate and voice their concerns. Fourth, they guide the process of resolving competing interests for urban goods and services. These include the right to be heard, to be accorded a

Urban law is necessary to provide a set of rules to mediate and balance competing public and private interests, especially in relation to land use and development

fair hearing and equality before the law.

Recognizing the role of human rights in society and specifically within urban areas, the New Urban Agenda contains numerous provisions on the same. It explicitly provides that States “aim to achieve cities and human settlements where all persons are able to enjoy equal rights and opportunities, as well as their fundamental freedoms.” It further adds that the New Urban Agenda is grounded in the Universal Declaration of Human Rights and other international human rights treaties.¹ It then lists specific rights that should be availed within an urban context. These include the right to adequate housing as a component of the right to an adequate standard of living; universal access to safe and affordable drinking water and sanitation;² equal access for all to public goods and quality services; increased security of tenure;³ gender equality and empowerment of all women and girls;⁴ and the inclusion of children, the youth, persons with disabilities, older persons, indigenous peoples and local communities.⁵

The New Urban Agenda also emphasizes on participatory and inclusive decision making across all levels of government and stakeholders; effectiveness, transparency and accountability in decision making; inclusion and respect for the rights of refugees, internally displaced persons and migrants; and dealing with homelessness and eliminating its criminalization through targeted policies.⁶

It was importantly noted that these human rights commitments heavily rely on legal frameworks. Without enforcement mechanisms, human rights represent entitlements that most individuals never get to enjoy in

1 Paragraph 12.

2 Paragraph 13 (a).

3 Paragraph 35.

4 Paragraph 13 (c)

5 Paragraph 134.

6 Paragraph 108.

practice. The law's role is to identify not only rights but also duties and the corresponding duty bearers. This means that legislation must be of good quality in that right holders and duty bearers are clearly identifiable. It also needs to be understandable, enforceable, and effective. Interestingly, it was highlighted that the fact that States are required to 'progressively realize'⁷ most of these rights and not immediately 'respect and ensure'⁸ them may be a challenge to their enjoyment. This may be particularly relevant where governments are continually using lack of resources as an excuse for lack of provision of basic services.

Moreover, it was argued that equality needs to be distinguished from equity. The former is founded on Aristotle's dictum that 'things that are like should be treated alike' and calls for similar treatment for all individuals. It supports the position that a person's individual physical or personal characteristics should be viewed as irrelevant in the allocation of social goods and services. Admittedly, equality is a useful principle in that it is meant to prevent arbitrary decision-making based on considerations of an irrelevant trait. It is seen as a bulwark against favouritism and bias. However, equality assumes that all individuals are on the same social, economic and political position. It ignores pre-existing inequalities that may affect how people are able to enjoy their rights. For example, while every person has the right to decent work, the extent to which this right is enjoyed may depend on the level of

⁷ Article 2, International Covenant on Economic Social and Cultural Rights.

⁸ Article 2, International Covenant on Civil and Political Rights.



education attained which may, in turn, be determined by the person's socio-economic background. Similarly, simply stating that both men and women have the right to own property may ignore the underlying economic and cultural conditions that make it difficult for the latter to own land.

Accordingly, it is important to go further than equality and advocate for equity. Equity is concerned with fairness of end results.⁹ It recognizes the different range of circumstances faced by individuals within the society. It appreciates their varying starting points and calls for differentiated intervention measures. For instance, equity recognizes that some people may be unable to enjoy the right to housing in a free-market economy (where theoretically, each person has the right to buy/lease property) and so requires governments to put in specific measures that target housing access for poor people. However, it was also observed that equity is a subjective concept and may vary according to culture, perspective and experience. That is, what is considered fair in a particular society may be deemed unfair in another. As such, the term equality of outcomes has been proposed as a more objective term as is reflected in SDG 10. It is, therefore, crucial that urban actors

⁹ Equity has also been termed as "substantive equality" as opposed to "formal equality."



Robert Lewis-Lettington of UN-Habitat and Dr. Maria Mousmouti of the IALS presenting at Urban Law Day.

consider what they seek to achieve in light of the likely implications of these terms during the policy formulation and legislative process as they may not necessarily result in similar effects.

Participation and inclusivity are key aspects of human rights. All persons are involved in making decisions that affect them and are able to benefit from the outcome of the process. It was, however, noted that participatory and inclusive urban governance remains a major problem. The planning process was specifically identified as one of the areas that needed more participation and inclusivity. The thought of planning as a technical and objective process was refuted. Instead, it was demonstrated that planning decisions have social, economic and political effects with groups affected in different ways. For this reason, all those with identifiable direct interests in the establishment, characteristics and outcomes of any planning decision should be involved in decision making. Importantly, participation needs to be adequate meaningful and not cosmetic. For example, seeking public comments by posting plans on walls within planning offices does not qualify as adequate and meaningful. The public should have both procedural access to the planning process and physical access to the resulting document.

Major Human Rights Challenges in Cities: Forced Eviction and Homelessness

Forced evictions and homelessness were identified as two vices that severely threaten the human rights of urban dwellers. Forced evictions have been specifically declared to be gross violations of human rights due to their wide ranging negative effects. They not only violate the right to housing but also threaten other rights such as health, education, food, livelihood, and even the right to life especially when evictions are carried out through violence. It was noted that forced evictions not only affect proprietary interests of the targeted individuals but also destroy their social networks, personal identities and access to employment. Furthermore, these evictions have a disproportionate impact on the most vulnerable and already marginalized groups. Women, girls, children, disabled persons, refugees, migrants and the poor face the brunt of such actions.

However, despite multiple human rights commitments, it was observed that forced evictions have continued to take place in many parts of the world. Governments were, therefore, urged to as far as possible prevent instances of forced evictions through security of tenure to all. In cases where people must be evicted, the process should involve certain safeguards. These include preparation of an eviction impact assessment, be non-discriminatory in law and in practice, be defined in law and be foreseeable, and be subject to consultation and participation of the affected people.¹⁰ Furthermore, there should be effective recourse mechanisms for those that disagree with the eviction decision. Compensation or resettlement must be done before the eviction and most importantly, forced evictions should never result in homelessness.¹¹

Homelessness was discussed as another serious violation of human rights. It has been defined through a three-dimensional approach that is anchored in human rights. The first dimension involves “the absence of material aspect of minimally adequate housing and of the social

10 Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2)

11 Basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I).



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aspect of a secure place to establish a family or social relationships and participate in community life.” The second dimension considers homelessness as a form of systemic discrimination and social exclusion while the third dimension recognizes those who are homeless as “rights holders who are resilient in the struggle for survival and dignity”.¹²

Similar to forced evictions, homelessness affects several rights including the right to life, the right to human dignity, the right to housing, right to health, protection from cruel and inhumane treatment and the right not to equality. Moreover, women, children, the elderly, the disabled, migrants, refugees and the internally displaced are disproportionately affected.

Interestingly, the law was highlighted as an exacerbating factor in human rights violations occurring within the context of homelessness. Public nuisance laws and those that criminalize homelessness were identified as contributing to the stigma and discrimination of homeless persons. Inadequate recognition of different tenure forms in the legal framework was also touted as one of the potential causes of homelessness. Security of tenure and decriminalization of homelessness was,

12 “Homelessness and the Right to Housing,” Report of the Special Rapporteur on adequate housing.

therefore, encouraged in line with paragraph 108 of the NUA which also calls for “targeted active inclusion strategies such as comprehensive, inclusive, and sustainable housing-first programmes.”

Selected Country and Regional Experiences

Somalia

The forum also included human experiences in the urban context from 3 regions. The first was “the experience in Somalia” which was presented by individuals from UN-Habitat. The country has been characterized by protracted conflict for the last 3 decades leading to loss of life, destruction of property, weakened institutions and poor adherence to the rule of law. One of the areas that has been most affected by the breakdown in governance is land management and land tenure rights. It was noted that armed rebel groups and individuals had taken advantage of the state of lawlessness and acquired land unlawfully. The State exercises only minimal control over public land as much of it has been seized for private interest.

Widespread displacement of people was also identified as a major human rights challenge. Conflict, natural disasters and the mismanagement of land has led to protracted displacement in the country. The number



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of internally displaced persons has risen from 500,000 in 2005 to over 2.2 million in 2018.¹³ Part of the displacement crisis also has a lot to do with social exclusion and marginalization, thwarting the ability of the most vulnerable groups to access economic, social and political opportunities.

UN-Habitat has been actively engaged in assisting the government of Somalia through strengthening financial management mechanisms to empower local and national governments on resource mobilization and supporting the establishment of economic and livelihood programs, particularly for youth and women. It has also been involved in establishing and strengthening land dispute resolution mechanisms that incorporate both formal and customary systems. This hybrid system has improved access to justice as it is cheaper, faster, and locally acceptable.

Palestine

The Palestine experience presented an interesting yet complex situation due to shared planning mandate between the Palestinian Authority and Israel. The challenge was to provide infrastructure and basic services in a context of fragmented institutional frameworks and tense relations between the two authorities. Among the interventions made to promote human rights in the area was a joint program between UN-Habitat and FAO that involved fostering tenure security for rural Palestinian communities of Massafer Yatta, Hebron. The program identified the main problem to be a lack of coherent and integrated sub-regional (cluster) plans for Palestinian communities, and lack of holistic spatial vision for land-based functions (mainly agricultural activities).

Notably, the program used a Human Rights Based Approach which focused on: rights (right to education, right to health, right to adequate standard of living, right to adequate housing, the right to life, liberty and security of person, and children's right to protection); groups and right holders (emphasis on women, youth and children); and specific areas of the Hebron Governorate. It also identified duty bearers who were Israel and Palestinian authorities. Furthermore,

¹³ UNHCR, "Somalia Internal Displacement," (2018), extracted from <https://data2.unhcr.org/en/dataviz/1>

it incorporated a Human Rights Impact Assessment aimed at monitoring and assessing the contribution of the current spatial planning policy to the realization of human rights of Palestinians on local, regional and national levels.

Latin America and the Caribbean

Latin America was shown to be a region where urbanization had delivered mixed results in terms of human rights. On the one hand, it manifests serious challenges in terms of inequality, inadequate public spaces, housing shortages, and insecurity. Housing deficit has increased from an estimated 38 million units in 1990 to between 42 and 51 million in 2011.¹⁴ Furthermore, house rental and land markets are poorly developed and regulated while segregation of areas continues to prevail. Statistics also indicate that while Latin America is home to only 8 per cent of the world's population, it accounts for 33 per cent of all homicides.¹⁵

On the other hand, however, the region exhibited some positive features in that 92 per cent of the urban population has piped water while 84 per cent have adequate sanitation in cities. The region also stands out in the international arena for the quality and diversity of their subsidized housing programmes although it was noted that there was inadequate linkage between these schemes and the location, design and quality of subsidized housing. Importantly, the region was represented as being at the forefront of advocating for the 'right to the city.' This concept reflects a collective rather than an individual right that recognizes the right of people to live in cities with equality, dignity, access to social services, and participation in governance among other elements.

Practical Tools for the Implementation of Human Rights Commitments in Cities

The Slum Upgrading Tool developed by UN-Habitat was presented as one of the tools that could potentially assist the implementation of human rights in urban areas. It intends to provide urban managers and other stakeholders with a framework to understand if and

¹⁴ UN-Habitat, *Affordable land and housing in Latin America and the Caribbean*, (UN Habitat 2011).

¹⁵ UNODC, *Global Homicide Book*, (United Nations Office on Drugs and Crime, 2013).

how their legal and regulatory framework supports participatory city-wide slum upgrading. It recognizes that laws and regulations may have an impact on how slum dwellers are formally and officially viewed and responded to and how their human rights are valued and respected. It also appreciates the role of planning and development responses on sustainability and equity or exclusion and segregation.

The Slum Upgrading Tool uses two sets of indicators. The first concerns functional effectiveness of the law while the second is technical in nature related to the core areas of what is considered sustainable and inclusive city-wide slum upgrading. Under the first set, the tool includes five main aspects to assess whether the legal framework is suitable for slum upgrading: the objectives of the regulations; mechanisms and processes provided; institutional/organizational responsibilities and roles; ambiguity and standard of drafting; and capacity to

implement the legislation. The second set lays out the technical elements, most of which are relevant to human rights in cities. These include security of tenure for slum dwellers; participatory and inclusive planning at scale; access to basic services such as affordable and safe water and sanitation; supply of affordable housing; and the availability of suitable finance mechanisms.

Conclusion

Cities continue to face serious challenges regarding human rights. Inequality, exclusion, and discrimination were identified as the most serious ones with forced evictions and homelessness specifically mentioned. It was hoped that implementation of the New Urban Agenda would enhance human rights within cities. Indeed, participants of the Urban Law Day widely agreed that human rights are essential for sustainable, inclusive and resilient urban areas.



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– Massafer Yatta

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