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including the right to development**

Access to justice for the right to housing

Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non- discrimination in this context*

Summary

In her report, prepared pursuant to Human Rights Council resolution 34/9, the Special Rapporteur examines the critical issue of access to justice for the right to housing. She suggests that the global housing crisis is rooted in a crisis in access to justice because without access to justice, housing is not properly recognized, understood or addressed as a human right. Millions who live in homelessness or unacceptable living conditions have no place where they can claim their right to housing when States have failed to progressively realize the right, imposed forced evictions, or criminalized those who live in homelessness or in informal housing. She argues that the outdated division of the right to housing into justiciable and non-justiciable components, negative and positive rights, must be firmly rejected. Ten key normative principles are identified which States must satisfy to ensure that all components of the right to housing are subject to effective remedies. The Special Rapporteur outlines how compliance with the obligation to progressively realize the right to housing is adjudicated; how forced evictions and criminalization must be prevented through access to justice and participation in decision-making; how national human rights institutions and informal justice systems should complement the role of courts; and how private actors are required to ensure access to justice for the realization of the right to housing.

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I. Introduction: the housing crisis as a crisis in access to justice

1. An estimated 1.8 billion people lack adequate housing. Twenty-five per cent of the world's urban population live in informal settlements. Homelessness and forced evictions are on the rise in virtually every country. In the United States of America, over 2 million households are evicted from their homes every year – 4 per minute.¹ These numbers reflect the global crisis in access to adequate housing, but they also reveal a global crisis in access to justice for the right to housing. When the capacity exists to eliminate widespread homelessness and inadequate housing, the only explanation for their persistence at current levels is that States and other actors have failed to recognize housing as a human right. The denial of access to justice is the embodiment of that failure. The right to access to justice is “fundamental to the very notion of human rights”.² To be a rights holder, and for housing to be treated as a fundamental human right, one must be able to claim rights, to give voice and context to the deprivation of dignity and rights experienced.

2. Violations of the right to housing are as much failures in the administration of justice as they are failures of housing programmes. If those living in inadequate housing and in homelessness have no access to justice, they are deprived of agency to bring violations to light, to address root causes or ensure appropriate responses. They are unable to challenge the policy choices and decisions that created the conditions in which they live.

3. Housing is the aspect of peoples' lives that is most likely to engage the need for access to justice. Yet access to justice for the right to housing is commonly ignored. In a survey of 45 countries by the World Justice Project, the most common issues identified by respondents in which access to justice was needed were overwhelmingly related to housing.³ When the same project assesses States' performance in providing access to justice for fundamental human rights, however, the right to housing is not among the human rights considered.⁴ In the 2030 Agenda for Sustainable Development, the targets and indicators for access to justice under Goal 16 do not consider any aspect of access to justice for the right to housing. The Guiding Principles on Business and Human Rights have been applied to the responsibilities of businesses to ensure access to effective remedies, but residential housing – the world's largest business – has been almost entirely ignored.

4. Ensuring access to justice for the right to housing must therefore challenge dominant notions of what access to justice entails. The inquiry must begin by asking what kind of justice is needed for the right to housing to be vindicated. The procedural and practical barriers facing potential rights claimants seeking access to courts and tribunals must be addressed, and so too must substantive barriers stemming from inadequate protection of the right to housing afforded by existing laws and by the prevailing interpretation and application of those laws within courts. Courts and tribunals are more often experienced by those who are living in informal settlements or homelessness as places where evictions are ordered or criminalizing sanctions imposed, rather than as venues where the right to housing can be claimed.

5. There have, however, been historic advances in access to justice for the right to housing in recent years that provide the foundations for a new and transformative approach. At the international level, the right to housing has been the subject of precedent-setting adjudication by the Committee on Economic, Social and Cultural Rights. At the national level, the right to housing has been at the centre of emerging socioeconomic rights jurisprudence. And at the local level, advocacy for meaningful accountability for the right

¹ See <https://evictionlab.org/national-estimates/>. These estimates represent only rental evictions ordered by courts and mortgage foreclosures.

² A/HRC/25/31, para. 2; see also A/63/275 paras. 48–67.

³ World Justice Project, *Global Insights on Access to Justice: Findings from the World Justice Project General Population Poll in 45 Countries* (Washington, D.C., 2018). The dominance of housing issues is clear if issues of housing title and access to water and sanitation are combined in the responses.

⁴ See <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2017%E2%80%932018/factors-rule-law/fundamental-rights-factor>.

to housing has become a central focus of social movements and city declarations of human rights.⁵

6. The Special Rapporteur has found that in all countries, the right to housing is understood by rights holders essentially as it is defined under international human rights law: “the right to live somewhere in security, peace and dignity”.⁶ The question that follows, and is invariably put to the Special Rapporteur, is: “Where do we go to claim our right to housing?” The first and most important step to realizing the right to housing is for States to answer that question, to ensure that the right to housing is afforded fair hearings and effective remedies, “by all appropriate means”, through courts, tribunals, rights-based strategies, human rights institutions, and community-based and informal justice systems.⁷

II. Access to justice for the right to housing: the normative framework

A. The right to housing made whole

7. Article 8 of the Universal Declaration of Human Rights affirms that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him [or her] by the constitution or by law. This applies to all rights in the Universal Declaration without distinction, including the right to housing under article 25.

8. The division of the rights in the Universal Declaration of Human Rights into two separate covenants and the provision of an optional complaints procedure only for civil and political rights when the two covenants were first adopted led to debates and confusion regarding the obligation to ensure access to justice and effective remedies for economic, social and cultural rights. This differential treatment of the two categories of rights translated into restrictions on access to justice for the right to housing. Usually, only those components of the right to housing that conform with a civil and political rights model of protection from State interference, such as freedom from cruel and inhuman treatment or from interference with privacy and home, were provided with access to justice.

9. As the Secretary-General noted in a 2013 report, the initial confusion regarding access to justice for economic, social and cultural rights has “since been largely overcome”. In the last two decades, “the United Nations human rights system has consistently recognized the right to an effective remedy for violations of economic, social and cultural rights”.⁸ These advances, with significant support from civil society, culminated in the adoption by the General Assembly, by resolution 63/117, of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, heralded as “human rights made whole” by the United Nations High Commissioner for Human Rights and putting an end to the differential treatment of the two categories of rights.⁹

10. These historic advances at the international level grew out of national- and regional-level struggles for the right to housing, led by human rights defenders. Behind the famous case names are women such as Olga Tellis in India, Irene Grootboom in South Africa and Felisa Alicia Saavedra in Argentina and street children such as Villagran Milagra in

⁵ See information on the new global movement The Shift, available at www.unhousingrapp.org/the-shift.

⁶ Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing, para. 7.

⁷ The Special Rapporteur thanks States, national human rights institutes and civil society organizations for their submissions for the present report. They are available at www.ohchr.org/EN/Issues/Housing/Pages/AccessToJustice.aspx. The Special Rapporteur also thanks Bruce Porter for his assistance in preparing the report.

⁸ A/HRC/25/31, para. 2.

⁹ Louise Arbour, “Human rights made whole”, Project Syndicate, 26 June 2008.

Guatemala, whose experiences brought to light the inherent connection between the right to housing and central human rights values linked to the right to a dignified life.¹⁰

11. A growing number of States included the right to housing as a justiciable right in their constitutions, and in jurisdictions that did not recognize the right to housing explicitly courts began to provide effective remedies for the right to housing by recognizing its indivisibility with the right to life.¹¹ Ensuring access to justice for the right to housing is less a question of the specific constitutional protections in place and more a question of whether courts and Governments are willing to recognize that the right to housing is central to the core human rights values that courts must safeguard and to which Governments must be held accountable.

B. Key principles of access to justice for the right to housing

12. The central question, “Where do I go to claim my right to housing?”, must be answered in the context of a State’s particular legal order. States are permitted to determine how best, but not whether, to ensure access to justice for various components of the right to housing. International human rights law imposes a number of overarching obligations on Governments and courts with respect to access to justice for the right to housing, based on the following 10 key principles.

Principle 1 – Access to justice must be ensured by all appropriate means and address the needs of diverse groups.

13. States must ensure access to justice for the right to housing by all appropriate means, including legislation, to the maximum of available resources, and without discrimination.¹² Access to justice for the right to housing must be conceived inclusively, addressing the diverse circumstances of different groups. It relies on a wide range of approaches, venues and institutions, including rights-based housing strategies, courts, landlord-tenant tribunals, human rights institutions and informal and customary justice systems.

Principle 2 – States must implement the right to housing within the domestic legal system so as to provide at least the same level of protection as is afforded under international human rights law.

14. Access to justice must be ensured for all components and dimensions of the right to housing that are guaranteed under international human rights law, ensuring accountability for the State’s obligations to respect, protect and fulfil the right to housing. Access to justice must be provided not only for a right to physical shelter, but to a safe and secure home in which to live in security, peace and dignity. Effective remedies must be available to ensure legal security of tenure, affordability, habitability, availability of services, accessibility, location and cultural adequacy.¹³

Principle 3 – Individuals and groups, households and communities must have standing to advance claims and to participate throughout legal processes and the implementation of remedies.

15. Violations of the right to housing may affect both individuals and groups. Entire communities are often affected by development plans or evictions. Access to justice must therefore extend to both individuals and groups. Support should be available for them to participate in all stages of rights claims and in the implementation of remedies. Groups with

¹⁰ Supreme Court of India, *Olga Tellis and Others v. Bombay Municipal Council*, Judgment of 10 July 1985; Constitutional Court of South Africa, *Government of the Republic of South Africa and Others v. Grootboom and Others*, Judgment of 4 October 2000; and Supreme Court of the City of Buenos Aires, *Comisión Municipal de la Vivienda v. Saavedra, Felisa Alicia y otros*, Judgment of 7 October 2002.

¹¹ See A/71/310.

¹² Committee on Economic, Social and Cultural Rights, *Ben Djazia and Bellili v. Spain* (E/C.12/61/D/5/2015) para. 13.4.

¹³ General comment No. 4, para. 8.

interest and expertise in systemic issues being addressed should be provided with amicus or public interest standing in hearings and be permitted to participate in the implementation of remedies.

Principle 4 – Denying access to justice cannot be justified on the basis that the right to housing is not considered justiciable within the State’s domestic legal order.

16. Denying access to justice for the right to housing places the State in non-compliance with its obligations to ensure effective remedies for all fundamental human rights. This cannot be justified on the basis that the right to housing or any of its components is not considered justiciable within the domestic legal order, as this would be contrary to article 27 of the Vienna Convention on the Law of Treaties.¹⁴ Domestic courts must therefore reject any submissions that a claim to the right to housing should not be heard by courts if no alternative independent body is available to hear the claim. Governments should desist from making these arguments before courts or international human rights bodies.

Principle 5 – Access to justice must apply to both negative and positive State obligations, including obligations to progressively realize the right to housing.

17. There must be access to justice for positive rights claims engaging resource allocation, such as for rental assistance or “housing first” programmes, as well as negative rights claims challenging State action resulting in deprivation of the right to housing, such as forced eviction or home demolition. Any distinction between the two categories of rights with respect to access to justice “is incompatible with the principle that the two sets of human rights are indivisible and interdependent”. Moreover, it would “drastically curtail the capacity of the courts to protect the rights of the most vulnerable and disadvantaged groups in society”.¹⁵

Principle 6 – States may delegate components of access to justice for the right to housing to administrative bodies, but judicial remedies must be available when needed.

18. The right to an effective remedy does not always require a judicial remedy. Administrative and other forms of remedies that ensure compliance with the right to housing may be adequate as long as they are “accessible, affordable, timely and effective”.¹⁶ Many States rely on administrative tribunals for remedies for protections of tenants’ rights, health and safety or land title. Alternative forms of remedy, however, should generally be reinforced and complemented by judicial remedies. Whenever the right to housing “cannot be made fully effective without some role for the judiciary, judicial remedies are necessary”.¹⁷

Principle 7 – Courts must interpret and apply domestic law in accordance with the State’s obligations to respect, protect and fulfil the right to housing.

19. The role played by courts and administrative decision makers is one of the most important factors determining State compliance with the right to housing. Courts are not simply neutral arbiters of rights claims; they are also the guardians of rights.¹⁸ Jointly with other branches of Government, they are bound by the State’s obligations to respect, protect and fulfil the right to housing.¹⁹ The judiciary must, therefore, exercise its authority to interpret and apply domestic law in a manner that promotes the realization of the right to housing and ensures effective remedies for this right.²⁰ “Neglect by the courts of this

¹⁴ “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

¹⁵ Committee on Economic, Social and Cultural Rights, general comment No. 9 (1998) on the domestic application of the Covenant, para. 10.

¹⁶ *Ibid.*, para. 9.

¹⁷ *Ibid.*

¹⁸ See Human Rights Council resolutions 29/6 and 31/2.

¹⁹ Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 4.

²⁰ General comment No. 9, para. 15.

responsibility is incompatible with the principle of the rule of law, which must always be taken to include respect for international human rights obligations.”²¹ When courts approve evictions without ensuring alternative accommodation or fail to provide remedies for violations of the right to life caused by homelessness, they violate international human rights and the rule of law and, in so doing, place the State in non-compliance with its international human rights obligations.

Principle 8 – States must promote decision-making that is consistent with the right to housing.

20. Governments and courts must ensure that all exercises of statutory authority, administrative decisions and policies accord with a State’s obligations to ensure the right to housing. In litigation, Governments should promote and adopt interpretations of domestic law that are consistent with the obligation to ensure effective remedies, including when defending against alleged violations.²² Decision makers with discretionary authority should exercise that authority consistently with the right to housing, for example by dismissing an eviction application which may result in homelessness or an application for zoning approval for a development which fails to further the realization of the right to housing.

Principle 9 – Remedies must address both individual and systemic violations.

21. Individual remedies should include, where appropriate, compensation and reparation for any violation of the right to housing, including the right to return to a home after an illegal eviction. Remedies must also address the structural causes and policies that gave rise to the violation and ensure non-repetition. Where appropriate, Governments should be required to adopt or amend legislation, allocate necessary resources or regulate private actors in the housing market to address structural causes of violations of the right to housing.

Principle 10 – Remedies must be implemented by Governments and enforced by courts with participation by rights holders.

22. Remedies ordered by courts with respect to the right to housing, whether to prevent threatened evictions or to implement effective housing strategies to address systemic violations, are too often ignored by Governments. It is fundamental to the rule of law that Governments respect the decisions of courts and human rights bodies by implementing required remedies. Where Governments or others require time to implement structural remedies, such as developing programmes to address the housing needs of particular groups, remedies should provide for independent supervision by the court or another authority, enforceable timelines, monitoring and reporting, and provision for participation and consultation with those affected.

III. Access to justice for the progressive realization of the right to housing

A. The standard of reasonableness

23. The majority of violations of the right to housing derive from the failure of States to progressively realize the right to housing by adopting appropriate measures to address the unacceptable circumstances in which people are living. Whether it is a failure to implement participatory upgrading plans in informal settlements or to implement plans to reduce and eliminate homelessness within a reasonable time, States’ failures to take positive measures to ensure the realization of the right to housing must be addressed as human rights violations affecting individuals and communities. Those affected must have access to justice to hold States accountable to the obligations described in article 2 (1) of the

²¹ Ibid., para. 14.

²² E/C.12/CAN/CO/4-E/C.12/CAN/CO/5, paras. 11 (b) and 36.

International Covenant on Economic, Social and Cultural Rights: to take steps “to the maximum of its available resources, with a view to achieving progressively the full realization of the [right to housing] by all appropriate means, including particularly the adoption of legislative measures”.

24. The adoption of the Optional Protocol resolved two critical issues that were debated during the drafting process. The adopted text established that claims submitted by individuals who have been affected by States’ failures to progressively realize Covenant rights are justiciable.²³ And it also established that while there may be a range of policies or approaches through which States may comply with article 2 (1), the means chosen must comply with a standard of “reasonableness”.²⁴

25. The Committee on Economic, Social and Cultural Rights has identified a number of factors to consider in assessing reasonableness. Measures must be deliberate, concrete and targeted towards the fulfilment of the right; implemented within a reasonable time frame; allocate resources in accordance with international human rights standards; address the precarious situation of disadvantaged and marginalized individuals or groups; and ensure that decision-making is transparent and participatory.²⁵

26. The assessment of reasonableness relies on hearing from rights holders. It is a contextual analysis that takes as its starting point the dignity interests brought to light through access to justice. The text of article 8 (4) of the Optional Protocol drew directly from the decision of the Constitutional Court of South Africa in the *Grootboom* case, in which the reasonableness of housing policies was assessed in the context of the circumstances of Irene Grootboom and others living with their children under plastic sheets on a sports field, without water or sanitation. The Court emphasized that progressive realization is not simply about statistical progress. Adequate housing is recognized as a fundamental human right “because we value human beings ... [E]veryone must be treated with care and concern. If the measures, though statistically successful, fail to respond to the needs of those most desperate, they may not pass the test.”²⁶

27. The standard for access to justice for the right to housing under international law, therefore, requires an assessment of measures taken to realize the right to housing, in the context of both the capacity of the State and of lived realities brought forward through the claiming of rights. It is a standard that accords flexibility as to the precise policy measures chosen but is firmly grounded in the obligation to fully realize the right to housing in the shortest possible time. Sandra Liebenberg explains that applying the reasonableness standard does not mean simply deferring to Government to make policy choices, but rather provides a critical space for rights claimants to participate in designing and implementing strategies and programmes.²⁷

28. Access to justice must also be ensured when States reduce the enjoyment of the right to housing through retrogressive measures.²⁸ Courts and other adjudicative bodies must require the State to prove that any such measures are fully justified on the basis of very strict criteria, and taking into account the maximum available resources and any alternatives available. Measures must be necessary and proportionate, remain in place only insofar as they are necessary, not result in discrimination and ensure that the rights of disadvantaged and marginalized individuals and groups are not disproportionately affected, and that the

²³ Catarina de Albuquerque and Malcolm Langford, “The origins of the Optional Protocol” in *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: A Commentary*, Malcolm Langford and others, eds. (Cape Town, Pretoria University Law Press, 2016).

²⁴ Article 8 (4) of the Optional Protocol.

²⁵ General comment No. 3 (1990) on the nature of States parties’ obligations, para. 2.

²⁶ *Government of the Republic of South Africa and Others v. Grootboom and Others*, para. 44.

²⁷ Sandra Liebenberg, “Participatory justice in social rights adjudication”, *Human Rights Law Review*, vol. 18, Issue 4 (December 2018), pp. 623–649.

²⁸ See Aoife Nolan, Nicholas J. Lusiani and Christian Courtis, “Two steps forward, no steps back? Evolving criteria on the prohibition of retrogression in economic and social rights”, in *Economic and Social Rights After the Global Financial Crisis*, Aoife Nolan, ed. (Cambridge University Press, 2014), pp. 128–129.

affected groups have been afforded genuine participation. All legal protections of the right to housing, and access to justice to ensure compliance, must remain in place.²⁹

29. The critical link between individual claims and progressive realization of the right to housing has been elucidated in the jurisprudence of the Committee on Economic, Social and Cultural Rights under the Optional Protocol. In the case of *Ben Djazia and Bellili v. Spain*, the Committee assessed measures taken by the State party in light of the circumstances of a family who became homeless after an eviction. The reasonableness standard was formulated as requiring the State to make “all possible effort, using all available resources, to realize, as a matter of urgency, the right to housing of persons who, like the authors, are in a situation of dire need”.³⁰ This necessitated attention to both individual circumstances and structural factors.³¹ As remedy, the State party was required to engage in genuine consultation with the family to ensure that they were afforded adequate accommodation and to develop a comprehensive plan with the necessary resources, indicators, time frames and evaluation criteria for the progressive realization of the right to housing for low-income persons.³²

B. Application in domestic law

30. The right to housing should be implemented in domestic law so as to include obligations of progressive realization. The 2010 Constitution of Kenya provides a helpful model, requiring the State to take “legislative, policy and other measures” for progressive realization of the right to housing, and setting out principles for the assessment of whether resource allocation and policy choices are in line with article 8 (4) of the Optional Protocol.³³

31. In many Latin American countries, the *amparo* procedure can provide remedies for the right to housing, including for violations linked to progressive realization.³⁴ For example, in a case brought by a woman and her son living in homelessness, a court in Argentina required the Government to implement a plan to eliminate homelessness, with a timetable for the implementation, the participation of those affected and the allocation of the maximum available resource.³⁵

32. Indian courts have recognized that a constitutional obligation of progressive realization of the right to housing may be inferred from the guarantee of the right to life.³⁶ This interpretive approach is consistent with the Human Rights Committee’s recently adopted general comment on the right to life, which recognized that the right to life requires “appropriate measures” to address “general conditions in society [such as] homelessness” in order to ensure the conditions necessary for a dignified life.³⁷

²⁹ E/C.12/2016/1, para. 4.

³⁰ E/C.12/61/D/5/2015, para. 17.5.

³¹ *Ibid.*, para. 17.2.

³² *Ibid.*, para. 21 (d).

³³ Constitution of Kenya, art. 21 (2); see, however, Court of Appeal, *Kenya Airports Authority v. Mitu-Bell Welfare Society and others*, civil appeal No. 218, Judgment of 11 April 2013, in which the Court invokes the “political questions” doctrine to limit the protection of the right to alternative housing for an evicted community.

³⁴ Supreme Court of Argentina, *Q.C., S.Y. c. Gobierno de la Ciudad de Buenos Aires*, petition for *amparo*, Judgment of 24 April 2012; Constitutional Court of Ecuador, case No. 1207-10-EP, Judgment of 17 April 2012; and Colombian Constitutional Court, decision No. T-025/04, 17 June 2004.

³⁵ Cámara de Apelaciones en lo Contencioso Administrativo y Tributario de la Ciudad Autónoma de Buenos Aires, *Ramallo, Beatriz y otros c. Gobierno de la Ciudad de Buenos Aires*, Judgment of 12 March 2002.

³⁶ Supreme Court of India, *People’s Union for Civil Liberties v. Union of India and Others*, No. 196 of 2001, Judgment of 30 November 2001; and Bombay High Court, *Shivaji Krishna Zunjare v. State of Maharashtra and Others*, Judgment of 23 July 2004, para. 6.

³⁷ General comment No. 36 (2018) on the right to life, para. 26.

33. The Revised European Social Charter has provided an important context for advancing claims related to the progressive realization of the right to housing. Article 31 of the Revised Charter requires States to undertake positive measures to promote access to adequate housing in order to prevent and reduce homelessness and to ensure affordable housing for low-income households. In *FEANTSA v. France* the European Committee on Social Rights clarified the obligation on States to “take steps within a reasonable time, with measurable progress and making maximum use of available resources”.³⁸ More recent cases have addressed the right to housing of the Traveller and Roma communities, families and unaccompanied children.³⁹

34. Despite the emerging regional and domestic jurisprudence, the extent to which claimants are securing access to justice for the progressive realization of the right to housing remains extremely limited. Ensuring access to justice in this context is an immediate and urgent obligation. All States must adopt housing strategies that include claiming mechanisms for accountability to the obligations of eliminating homelessness and realizing the right to adequate housing for all in the shortest possible time.⁴⁰ As noted in the Special Rapporteur’s previous report, these legal obligations should be aligned with the commitments made in the 2030 Agenda for Sustainable Development to ensure adequate housing for all by 2030.⁴¹

IV. Access to justice in the context of evictions and displacement

A. Affirming the rule of law and halting forced evictions

35. The definition of forced evictions under international human rights law centres on the denial of access to justice, and access to justice is critical for their prevention. Forced evictions are defined as “the permanent or temporary removal against their will of individuals, families and/or communities from the home and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”.⁴² This definition also applies to any removal of homeless people from where they are living. Forced evictions constitute a gross violation of international human rights and must be strictly prohibited in domestic law, properly enforced by courts. Court orders must be fully respected and implemented by State authorities.⁴³

36. Access to justice must ensure that eviction is only carried out as a last resort, in accordance with all legal requirements and with prior genuine consultation with those affected, that all viable alternatives to the eviction are explored, and that no one will be rendered homeless as a result of the eviction. Courts must require all appropriate measures to be taken to ensure, where possible, that adequate alternative land and housing are available.⁴⁴ Victims of forced evictions must receive fair and just compensation for any losses, both personal and real, including the loss of other property or goods.⁴⁵ Where

³⁸ European Committee on Social Rights, *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France* (complaint No. 39/2006), Merits, decision of 5 December 2007, para. 58.

³⁹ European Committee on Social Rights, *European Roma and Travelers v. Czech Republic* (complaint No. 104/2014), Merits, decision of 17 May 2016; *International Federation for Human Rights (FIDH) v. Ireland* (complaint No. 110/2014), Merits, decision of 12 May 2017; and *European Committee for Home Based Priority Action for the Child and the Family v. France* (complaint No. 114/2015), Merits, decision of 24 January 2018.

⁴⁰ See general comment No. 4. See also OL CAN 2/2018, available from the communications database of special procedures (www.ohchr.org/en/hrbodies/sp/pages/communicationsreportssp.aspx).

⁴¹ See A/HRC/37/53.

⁴² Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on forced evictions, para. 4.

⁴³ Commission on Human Rights resolutions 1993/77 and 2004/28.

⁴⁴ See general comment No. 7; and E/C.12/61/D/5/2015, paras. 13.4 and 15.1–15.2.

⁴⁵ General comment No. 7, para. 13.

possible, they must be granted a right of return with any destroyed housing reconstructed or replaced with adequate housing.⁴⁶

37. Forced evictions and violations of these clear legal standards are rampant worldwide. Usually there is no access to courts. At other times, courts order evictions in violation of international human rights law and in some circumstances, authorities act in blatant defiance of court injunctions. The Housing and Land Rights Network documented the demolition of over 53,000 homes in forced evictions in 2017 in India. Court orders were responsible for 17 per cent of them.⁴⁷ In recent communications the Special Rapporteur has been informed that tens of thousands of migrants on the outskirts of Beijing⁴⁸ and 26,000 households in Italy⁴⁹ were evicted in 2017 with no provision of alternative housing. Recent changes to legislation in Hungary require the forced eviction of homeless people from where they are residing, with mandatory incarceration after two warnings.⁵⁰ Some 30,000 residents of the Otodo Gbame community were forcibly evicted from their ancestral fishing settlement in Nigeria and their homes demolished in violation of a court injunction.⁵¹ In Kenya, authorities similarly ignored a court order and forcibly evicted the Sengwer indigenous people from the Embobut, burning 1,800 homes to the ground.⁵²

B. Reconceiving justice in the context of evictions, displacement and relocation

38. Access to justice in the context of displacement cannot be restricted to responding to threatened evictions or to seeking remedies after irreparable damage has been done to peoples' lives and communities. Applications to evict communities are usually symptoms of States' failures to meaningfully engage with communities to develop alternatives that respect their rights and that can be implemented cooperatively, without the use of force. Access to justice must be reconceived both in legislation and in practice to ensure rights-compliant decision-making from the earliest stages of any relocation or development plan. Engagement must go beyond mere consultation and ensure rights-based negotiation, with recourse to courts where necessary to ensure human rights compliance.⁵³ A facilitator from a human rights institution or ombudsperson's office may be appointed to oversee this process.

39. Human rights impact assessments must be conducted prior to the approval of any development plan.⁵⁴ These assessments must provide for hearings and meaningful engagement through which residents can affirm and secure their right to housing. Commitments made by international financial institutions and development banks to integrating human rights in development should similarly require rights-based engagement with affected communities and ensure access to justice through complaints procedures.⁵⁵

40. Access to justice must also be provided to address the underlying causes of displacement and evictions. Where increased numbers of households are unable to afford rent or mortgage payments, courts should require Governments to provide financial assistance and to adopt other measures to allow people to remain in their homes. Effective

⁴⁶ A/73/310/Rev.1, para. 34. See also A/HRC/4/18, annex I; and High Court of Kenya at Embu, *Ibrahim Sangor Osman v. Minister of State for Provincial Administration and Internal Security*, Judgment of 16 November 2011.

⁴⁷ Housing and Land Rights Network, *Forced Evictions in India in 2017: An Alarming National Crisis*, fact sheet, February 2018.

⁴⁸ JAL CHN 8/2018.

⁴⁹ JAL ITA 3/2018.

⁵⁰ See www.ohchr.org/Documents/Issues/Housing/AmicusConstitutionalCourtHungary_1.pdf.

⁵¹ UA NGA 4/2016.

⁵² See submission by Amnesty International for the present report, pp. 6–7.

⁵³ Lucy Williams, "The right to housing in South Africa: an evolving jurisprudence", *Columbia Human Rights Law Review*, vol. 45, No. 3 (Spring 2014), pp. 827–834.

⁵⁴ See A/HRC/4/18, annex I, paras. 28–36.

⁵⁵ C. Daniel and others, eds., *Glass Half Full? The State of Accountability in Development Finance* (Amsterdam, Centre for Research on Multinational Corporations, 2016).

mechanisms must also be in place to ensure hearings of challenges to development plans that would result in displacement of lower-income communities.

V. Access to justice to end criminalization and discrimination based on housing status

41. Laws and their interpretation and application by courts frequently perpetuate systemic discrimination and stigmatization against those who are homeless or living in informal settlements.⁵⁶ Rather than being treated as rights holders entitled to remedies for serious violations of the right to housing, these groups are treated as violators of laws and “encroachers” on the land.

42. In keeping with international human rights law, access to justice must be reconceived to focus on protecting and ensuring the right to housing for those who are homeless and inadequately housed and must not be used to criminalize them. The Human Rights Council has called upon States to take all measures necessary to eliminate legislation that criminalizes homelessness and to ensure an effective remedy and the right to access to justice.⁵⁷ United Nations treaty bodies have established that discrimination on the grounds of socioeconomic status, including homelessness, is a prohibited ground under international human rights law and must be recognized within domestic justice systems.⁵⁸ The Committee on the Elimination of Racial Discrimination has recognized the criminalization of homelessness as intersectional discrimination, linked to systemic racism and colonization of indigenous peoples.⁵⁹

43. The Human Rights Committee has found that the criminalization of homelessness may violate the right to freedom from cruel, inhuman or degrading treatment, the right to liberty and security of the person and protection from arbitrary arrest or detention.⁶⁰ Domestic courts have reached similar findings. Courts in the United States have invoked constitutional protection from cruel and unusual punishment to strike down local ordinances that ban sleeping in public spaces and prohibited vehicles serving as homes from being towed away for parking infractions.⁶¹ Canadian courts have struck down city bylaws preventing homeless people from sheltering themselves overnight in parks under makeshift homes of tarps or cardboard boxes as violating the right to life, liberty and security of the person.⁶²

44. Ensuring access to justice to challenge forced eviction and criminalization in these cases is important, but it is alarming that courts have not gone further to recognize the need for positive measures for access to adequate housing. Ensuring only a right to live in a cardboard box or under plastic in the most affluent countries in the world does not remotely satisfy the standard of reasonable measures required under international human rights law. Courts must interpret the rights relied upon in these cases – to life, security of the person and equality or freedom from cruel and inhuman treatment – consistently with States’ obligations to take positive measures to address homelessness itself as an egregious violation of human rights.⁶³ Initiatives like the Homeless Bill of Rights in Europe and the Housing Not Handcuffs movement in the United States advocate strongly against

⁵⁶ See A/HRC/31/54 and A/73/310/Rev.1.

⁵⁷ Resolution 31/9. See also A/HRC/13/20.

⁵⁸ Human Rights Committee, *Whelan v. Ireland* (CCPR/C/119/D/2425/2014); and general comment No. 36, para. 26.

⁵⁹ See, for example, CERD/C/USA/CO/7-9.

⁶⁰ CCPR/C/USA/CO/4.

⁶¹ United States Court of Appeals for the Ninth Circuit, *Martin and others v. City of Boise*, Opinion of 4 September 2018; and Superior Court of Washington for King County, *Seattle v. Steven Gregory Long*, ruling of 2 March 2018.

⁶² Supreme Court of British Columbia, *Abbotsford (City) v. Shantz*, Judgment of 21 October 2015.

⁶³ For an analysis of cases in the United States in this light, see Eric Tars and others, “Can I get some remedy? Criminalization of homelessness and the obligation to provide an effective remedy”, *Columbia Human Rights Law Review*, vol. 45, Issue 3, pp. 738–771.

criminalization while properly emphasizing that “the most important right a homeless person has is to exit homelessness”.⁶⁴

VI. Ensuring equality in access to justice

45. Victims of violations of the right to adequate housing are among the most marginalized groups in society. They face a range of barriers to accessing justice, including challenges related to literacy, education, poverty, discrimination, access to legal representation and ability to navigate complex legal and administrative systems.⁶⁵ Where legal aid is available, it is often unavailable for housing cases and rarely available to advance substantive claims to the right to housing. Lengthy delays in cases being heard and decided means that access to justice may be too late to be effective for those in the most dire circumstances. Linguistic, cultural and religious barriers are particularly acute for indigenous peoples, ethnic minorities and migrants.⁶⁶ States must take all reasonable measures to overcome these barriers and ensure the widest possible enjoyment of access to justice for the right to housing. Mobile courts can provide access to justice in remote areas and legal assistance should be provided through community outreach, combined with community legal education about the right to housing and how to claim it. The right of access to justice for the right to housing requires distinctive approaches for different groups.

46. **Access to justice for indigenous peoples** must be implemented in accordance with the United Nations Declaration on the Rights of Indigenous Peoples.⁶⁷ The Declaration affirms that indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to housing and other programmes through their own institutions where possible. No relocation or development affecting indigenous communities may occur without their free, prior and informed consent.⁶⁸ States must establish, in conjunction with indigenous peoples, “a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources” (art. 27). The Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization similarly guarantees free and informed consultations, and due regard to indigenous custom where compatible with international human rights. Thus, indigenous peoples have the right to the adjudication of their claims to the right to land and housing in a manner which respects their own laws and traditions.

47. Indigenous justice systems should be fully supported by States so that they may develop distinctive approaches to ensuring the right to housing. Particular efforts are required to ensure that the rights of urban indigenous peoples living outside of traditional territories, often in homelessness or inadequate housing, are equally protected. A number of States have incorporated these international norms into domestic law, either through legislation or through judicial interpretations.⁶⁹ Article 57 of the Constitution of Ecuador is exemplary in this regard, though its implementation has been lacking.

48. Some indigenous claims to the right to land and housing that have been denied within national systems have been addressed within regional systems. Considering the eviction of the Ogiek community from ancestral lands in the Mau Forest of Kenya, the African Court on Human and Peoples’ Rights drew on the United Nations Declaration to recognize the obligations of the State to take positive measures to support the rights of

⁶⁴ See www.housingrightswatch.org/sites/default/files/Template%20Homeless%20Bill%20of%20Rights%20EN_0.pdf; see also <http://housingnohandcuffs.org>.

⁶⁵ A/67/278, paras. 5–6; see also submission by Défenseur des droits, France, for the present report.

⁶⁶ Julinda Beqiraj and Lawrence McNamara, *International Access to Justice: Barriers and Solutions* (International Bar Association, 2014).

⁶⁷ For an elaboration of access to justice for indigenous peoples based on the Declaration, see A/HRC/27/65.

⁶⁸ Articles 10, 11, 19, 28 and 32.

⁶⁹ Inter-American Court of Human Rights, *Kichwa Indigenous People of Sarayaku v. Ecuador*, Judgment of 27 June 2012, para. 164.

indigenous peoples to development and culture and to remain on their traditional territories.⁷⁰ The Inter-American Court of Human Rights has affirmed that the distinctive relationship with land, property and housing among indigenous peoples must be incorporated into the interpretation and application of the right to property under the American Convention on Human Rights and has developed extensive jurisprudence on the rights of indigenous peoples.⁷¹ In the recent case of *Kaliña and Lokono Peoples v. Suriname*, the Court found that the laws of Suriname failed to provide legal remedies for the protection of the collective land rights of indigenous peoples, depriving the Kaliña and Lokono peoples of land and access to a river that was essential to both their cultural life and their survival.⁷² The Court ordered the adoption of legislative and other measures to recognize the rights of all indigenous and tribal peoples subject to State jurisdiction.

49. **Women** experience multiple systemic barriers to access to justice. As noted by the Committee on the Elimination of Discrimination against Women, obstacles include “gender stereotyping, discriminatory laws, intersecting or compounded discrimination, procedural and evidentiary requirements and practices, and a failure to systematically ensure that judicial mechanisms are physically, economically, socially and culturally accessible to all women”.⁷³ Access to justice for the right to housing for women – as described in thematic reports of previous mandate holders – means women must be able to challenge systemic discrimination with respect to land, housing and property⁷⁴ in a range of areas, including inheritance, marriage, divorce, succession and title registration.

50. Where access to justice in housing and land relies on customary laws and traditional practices, women must have recourse to formal justice systems to challenge systemic discrimination.⁷⁵ On the other hand, when customary ownership and tenure arrangements are replaced by formal title, property rights, financing and new tenure arrangements, women also face systemic discrimination within formal justice systems. Women are often denied equal access to title, rental agreements or credit to finance housing.⁷⁶ Concerted efforts are required to provide spaces and support for women to make substantive equality claims in all areas related to housing and through which women-led transformative remedies can be designed and implemented. Support should be provided for legal empowerment strategies and community-based human rights education for women.⁷⁷

51. **Access to justice for persons with disabilities** requires States to take positive measures in accordance with article 13 of the Convention on the Rights of Persons with Disabilities to ensure effective participation in all stages of legal processes. Justice systems must recognize both the barriers faced in developing and taking forward disability-related claims and the distinctive nature of the right to housing claims advanced. Adjudication of such claims must operate within the “disability human rights paradigm” affirmed in the Convention and described in the Special Rapporteur’s report on the right to housing of

⁷⁰ African Court on Human and Peoples’ Rights, *African Commission on Human and Peoples’ Rights v. Republic of Kenya* (application No. 006/2012), Judgment of 26 May 2017, para. 126.

⁷¹ For a summary, see Inter-American Court of Human Rights, *Kaliña and Lokono Peoples v. Suriname*, Judgment of 25 November 2015, paras. 129–132.

⁷² *Ibid.*, paras. 152–160.

⁷³ General Recommendation No. 33 (2015) on women’s access to justice, para. 3; see also Committee on Economic, Social and Cultural Rights, general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, paras. 21 and 38.

⁷⁴ See E/CN.4/2006/118 and A/HRC/19/53.

⁷⁵ See International Network for Economic, Social and Cultural Rights Women and ESCR Working Group, “Mapping study on women’s rights related to land, housing and natural resources”, July 2016.

⁷⁶ Ben Cousins and Espen Sjaastad, “Formalisation of land rights in the South: an overview” in *Land Use Policy*, vol. 26, No. 1 (January 2009).

⁷⁷ United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and others, *A Practitioners’ Toolkit on Women’s Access to Justice Programming: Introduction* (United Nations, 2018). See, for example, the mobile courts initiative in the Democratic Republic of the Congo, available at <http://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/Case-Study-DRC-Mobile-Gender-Courts.pdf>; and the women’s initiative in Bangladesh, available at www.angoc.org/wp-content/uploads/2016/01/Women-issue-brief1.pdf.

persons with disabilities, focused on dignity, substantive equality, accessibility and participation and ensuring the right to live independently in the community.⁷⁸

52. **Children’s access to justice** for the right to housing must be founded on the principle of the best interests of the child and require the legal empowerment of children through access to information and support, provided in an age-appropriate manner, and ensure effective means to claim their rights.⁷⁹ Special measures must be taken to provide access to justice for children in street situations. According to the Committee on the Rights of the Child, this includes, “access to individual complaints mechanisms, by children themselves and/or represented by adults, and to judicial and non-judicial redress mechanisms at the local and national levels, including independent human rights institutions”.⁸⁰

53. **Access to justice for racial and ethnic minorities** must address the intersection of systemic racism and violations of the right to housing. The International Convention on the Elimination of All Forms of Racial Discrimination prohibits discrimination in housing based on race, colour, or national or ethnic origin and ensures equality in the enjoyment of the right to housing. Discrimination and evictions facing Roma communities in Europe and the disproportionate number of African Americans among the homeless in the United States are examples of grossly unequal enjoyment of the right to housing that require enhanced access to justice for structural remedies. Remedies must include positive measures to address systemic inequality in housing conditions as well as preventing racial discrimination in access to land, mortgages, rental housing and services. Discrimination on the grounds of race and ethnicity intersecting with other grounds, including socioeconomic status and gender, must be recognized.

54. **Access to justice for migrants** must ensure effective remedies for widespread systemic discrimination in access to shelters and public and private housing.⁸¹ Migrants must be empowered to challenge laws that exclude them from accessing social housing or that forbid private landlords from renting to them. Where migrants themselves are not in a position to advance claims on their own behalf, claims should be heard from representative organizations. Migrants must have access to legal assistance without requiring disclosure of their immigration status to public authorities and, where necessary, access to complaints procedures that preserve anonymity. Violations of the right to housing of migrants cannot be justified as measures to discourage irregular migration.

VII. Access to justice beyond courts

A. National human rights institutions

55. National human rights institutions have a clear responsibility and a critical role to play in promoting and ensuring access to justice for the right to housing. To qualify as such under the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), human rights commissions, ombudspersons or public defenders are required to identify and address areas of State non-compliance with obligations to ensure access to justice for violations of all human rights. They should therefore examine legislative and administrative provisions relating to the right to housing to ensure compliance with the normative framework for access to justice as described above. While many national human rights institutions have failed to devote equal resources to economic, social and cultural rights, and to the right to housing in particular,

⁷⁸ A/72/128, paras. 1–7 and 17–19.

⁷⁹ A/HRC/25/35.

⁸⁰ General comment No. 21 (2017) on children in street situations, para. 22.

⁸¹ Committee on the Elimination of Racial Discrimination, General Recommendation No. 30 (2004) on discrimination against non-citizens.

most have authority to address human rights in housing and are well positioned to play a critical role in this regard.⁸²

56. National human rights institutions should monitor the progressive realization of the right to housing, hold hearings to ensure that the circumstances of marginalized groups are fully addressed and recommend appropriate remedial actions or policy responses by Governments or private actors.⁸³ In their engagement with the Sustainable Development Goals, they should ensure access to justice and accountability for progressive realization, including goals and timelines consistent with target 11.1 to ensure access to safe, secure and affordable housing for all by 2030.

57. National human rights institutions should provide public legal education and assistance to rights claimants to access justice for the right to housing through all available mechanisms. They may assist rights holders to bring cases to courts or tribunals by initiating claims jointly with rights holders, by participating as third parties or amicus, by providing necessary evidence on systemic issues or by supervising the implementation of remedies. The Defensoría del Pueblo in Colombia has conducted site visits in order to hear directly from communities, forwarded information about systemic violations of the right to housing to municipal or national authorities and followed up with strategic litigation on the right to housing when necessary.⁸⁴ The Scottish Human Rights Commission is playing a leading role in developing models for ensuring effective remedies for the right to housing and other socioeconomic rights.⁸⁵

B. Business and human rights and the right to a remedy

58. With widespread deregulation and privatization of housing and unprecedented investment by private equity firms, pension funds and other financial actors in housing markets, ensuring access to justice to hold private actors accountable to the right to housing is more important than ever. This is an obligation of States, not something that can be left up to private actors to implement on a voluntary basis. Whatever role is accorded private actors and investors in the housing system, States cannot contract out of their obligations to provide access to justice for the right to housing. They must adopt “legislative, administrative, educational and other appropriate measures” requiring that the actions of private actors be consistent with, and do not undermine, the realization of the right to housing.⁸⁶

59. States must ensure access to effective remedies not simply when private actors create “harms” or “human rights abuses” as they are traditionally understood, but also to ensure the progressive realization of the right to housing “by all appropriate means”. Access to justice must be available not only when corporations have actively deprived people of the right to housing through evictions, land grabbing or other “abuses”, but also when their actions undermine the realization of the right to housing, such as when private equity and asset management firms purchase affordable housing to replace it with luxury developments. Whether local, national or transnational, businesses involved in developing, renting, selling, managing or investing in housing, as well as those providing credit for housing, must be held accountable through access to justice for those affected by their actions.

⁸² Committee on Economic, Social and Cultural Rights, general comment No. 10 (1998) on the role of national human rights institutions in the protection of economic, social and cultural rights; see also submissions for the present report by Azerbaijan, Colombia, France, Georgia, Germany, Guatemala, Nicaragua, the South African Human Rights Commission, the Ombudsman Institution of Turkey and Housing and Land Rights Network.

⁸³ See submission by the South African Human Rights Commission for the present report, p. 8.

⁸⁴ See submission by the Defensoría del Pueblo of Colombia for the present report.

⁸⁵ Katie Boyle, *Models of Incorporation and Justiciability for Economic, Social and Cultural Rights* (Edinburgh, Scottish Human Rights Commission, 2018).

⁸⁶ Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, para. 14.

60. A wide range of options are available to States to ensure such accountability. In some constitutions, the right to housing applies directly to private actors, allowing access to effective remedies where actions of landlords, banks and financial actors undermine this right.⁸⁷ In others, where constitutional obligations are restricted to Governments, constitutional litigation may require Governments to impose necessary regulations. Privatization should also be subject to judicial review when it is contrary to the progressive realization of the right to housing.⁸⁸

61. The barriers facing claimants seeking to hold corporate actors accountable, however, are often insurmountable. Complex corporate structures and veils are prevalent among investors in housing and are difficult to pierce. There is no “equality of arms” between low-income communities and massive private equity firms. The Special Rapporteur has heard directly from tenants in multiple countries dealing with the same transnational private equity firms acting as remote landlords. All have common complaints but nowhere to go for hearings.

62. Where private investors have been provided with development assistance, access to justice may be provided by way of complaints procedures through the relevant international financial institutions. The Compliance Advisor/Ombudsman for private sector lending through the World Bank has investigated several complaints related to housing, including when an investor failed to consider the rights of current residents in a development project.⁸⁹ By and large, however, international financial institutions have failed to implement meaningful accountability or access to justice for the right to housing.⁹⁰

63. Under the “third pillar” of the United Nations Guiding Principles on Business and Human Rights – the responsibility to ensure access to effective remedies – it is proposed that effective remedies be put in place for human rights violations through a combination of judicial and non-judicial mechanisms, all of which must comply with standards of independence, fairness, transparency and legitimacy.⁹¹ Stakeholders should be able to raise concerns related to accountability to human rights and “remediation of adverse human rights impacts”. Mechanisms must be developed collaboratively and must be trusted by stakeholder groups and must be procedurally fair, provide adequate assistance to enable full participation, and include clear time frames and monitoring of remedies. They must ensure access to information, independent advice and expertise, and facilitate engagement and dialogue. Most importantly, they must ensure that outcomes and remedies accord with the right to housing and other internationally recognized human rights.

64. If such mechanisms are properly focused on ensuring compliance with the right to housing, they may play an important role in ensuring access to justice in the context of private housing development and management. However, it is important that human rights obligations of States not be confused with corporate responsibility: it is the obligation of States to regulate private actors and to ensure access to justice when the actions of private actors result in a violation of the right to housing. Compliance with the right to housing cannot rely on voluntary commitments or mediated settlements. Where necessary, States should impose obligations on private actors to facilitate access to justice. Just as housing developers may be required to adopt measures to protect the environment or to accommodate disability, they may also be required, through legislation, to provide for independent adjudication of human rights complaints, legal assistance for residents, and independent monitoring and oversight of implementation of remedies.

⁸⁷ See Aoife Nolan, “Holding non-state actors to account for constitutional economic and social rights violations: experiences and lessons from South Africa and Ireland”, *International Journal of Constitutional Law*, vol. 12, Issue 1 (January 2014), pp. 61–93.

⁸⁸ See https://www.eldiario.es/madrid/Ana-Botella-Gobierno-condenados-millones-venta-vivienda-fondos-buitre_0_851114898.html.

⁸⁹ See Compliance Advisor Ombudsman, *Belarus/Strominvest II-01/Minsk*, case filed on 24 March 2016; see also *South Africa/Lonmin-02/Marikana*, case filed on 16 June 2015; and *Guinea/Nedbank-01/Kintinian*, case filed on 27 April 2017.

⁹⁰ A/73/310/Rev.1, paras. 101–102.

⁹¹ Principles 25–31.

C. Informal and customary justice

65. As housing issues are usually resolved outside of courts, often at the local level, it is important to ensure that informal and customary justice systems also provide access to justice for the right to housing. Such systems may include customary or religious courts, local or administrative authorities, community-based paralegals, tenants' unions or collaborative dispute resolution procedures. Compared to formal courts, informal justice systems can be culturally and socially less threatening, more timely and more cost-effective, and they can enjoy greater social legitimacy and trust among rights claimants. They can also be more participatory, with stakeholder representation on adjudicative bodies, and can integrate rights-empowerment strategies and human rights education at the local level. They often have distinctive competencies to address local housing issues such as informal tenancies and land use. When properly guided by human rights norms, with particular attention to gender equality, informal justice systems are capable of "delivering accessible justice to individuals and communities where the formal justice system does not have the capacity or geographical reach".⁹²

66. In many states in the Global South, customary tenure covers the vast majority of land transactions. In such circumstances, States should integrate informal processes through which housing issues are resolved at the community level with formal justice systems that are capable of ensuring compliance with international or constitutional human rights law. This combined approach is likely to achieve better results in terms of human rights.

67. The Special Rapporteur, during her missions, has experienced first-hand the benefits of informal justice systems for the right to housing. In the Republic of Korea, for example, the municipal government of Seoul has established a committee against human rights violations to enable communities and individuals to raise human rights complaints before a diverse panel of experts that includes city officials, human rights lawyers, people with lived experience and social workers. The committee investigates and makes recommendations on human rights violations at the city level. It works in tandem with a city ombudsperson who, once a violation has been established, can make an official complaint and trigger formal proceedings.⁹³

68. In Spain, a country with a staggering number of evictions each month due to mortgage and rental arrears, a grass-roots movement called Plataforma de Afectados por la Hipoteca (PAH) works with tenants to delay evictions and ensure access to alternative housing. Since 2013, the organization has stopped at least 4,065 evictions; almost all of the residents have been rehoused.⁹⁴

VIII. Conclusion and the way forward

69. **Access to justice for the right to housing is inseparable from the right itself. All States, therefore, must have an answer to the question so often put to the Special Rapporteur: "Where can I go to claim the right to housing?"**

70. **States cannot hold themselves up as leaders in human rights while leaving increasing numbers of residents to live and die on their streets, with no means to hold their Governments accountable and with no access to effective remedies. The time for excuses, justifications and looking the other way when access to justice is denied for the right to housing has long passed. Rights must have remedies, and Governments must be held accountable to rights holders.**

71. **Rampant evictions of those living in informal settlements, disregard of court orders and the rule of law and criminalization of those who are homeless suggest one**

⁹² *Informal Justice Systems: Charting a Course for Human-Rights Based Engagement* (New York, United Nations Development Programme, United Nations Children's Fund and UN-Women), p. 11.

⁹³ Introduction to the human rights governance handbook issued by the municipality of Seoul, given to the Special Rapporteur during her visit.

⁹⁴ See <https://afectadosporlahipoteca.com/asesoria-y-recursos/asesoria-colectiva/>.

thing: those whose right to housing has been violated have not been recognized and treated as equal members of the human family. As long as States deny access to justice for the right to housing, they perpetuate a hierarchy of human rights, exposing the discriminatory position that some rights (and thus some rights holders) matter more than others.

72. Access to justice is not about demanding a State-provided house. It is about recognizing the inherent dignity of, and equal and inalienable rights for, those whose right to housing has been violated. It is about providing a human rights space in which the claim to a right to live in dignity and security is clearly heard, valued and responded to.

73. There is growing worldwide support for creating spaces where the right to housing can be claimed. Social movements, city mayors, and an increasing number of Governments, human rights institutions and courts are recommitting to the right to housing and to empowering rights holders to claim their rights and hold all levels of government, transnational corporations and other financial actors accountable.

74. Access to justice for the right to housing can be provided in all States. It just takes a commitment to do so. In States that have accorded constitutional recognition of the right to housing, courts must breathe life into these provisions so that all components of the right to housing can be claimed, adjudicated and ensured effective remedies. Where States lack explicit constitutional recognition of the right to housing, access to justice can be achieved through the recognition of its interdependence and indivisibility with the right to life and other rights.

75. A wide range of actors must abandon the marginalization of the right to housing and its claimants from mainstream human rights practice. National human rights institutions, judicial councils, legal communities and international human rights organizations should be at the forefront of collaborative initiatives to ensure access to justice for the right to housing. It is, however, ultimately the State's responsibility to provide all necessary supports and institutional mechanisms in this regard.

76. Achieving access to justice for the right to housing remains a work in progress. It is built from the ground up. It begins with individuals, groups and communities recognizing their circumstances as a violation of the right to housing and articulating a human rights claim. Claimants must be supported by their communities, legal advocates, human rights organizations and others to advance the claim. They must be provided a space in which the claim can be heard and adjudicated. And finally, they must be assured of effective remedies, fully implemented.
