

Written Submission

by Franciscans International in response to the invitation by the UN Special Rapporteur on the right to adequate housing to send written comments on her draft Guidelines for the implementation of the right to an adequate housing

November 2019

Introduction

1. Franciscans International (FI) welcomes the opportunity given by Ms. Leilani Farha, UN Special Rapporteur on the right to adequate housing to submit comments on her draft Guidelines for the implementation of the right to adequate housing (hereafter the draft Guidelines). FI also warmly welcomes the initiative of Ms. Farha to compile key learnings from her six-year experience on the mandate in the form of this policy guidance to States.
2. The draft Guidelines are not only grounded in the experience of the mandate of the Special Rapporteur, including through country visits. They are also based on existing international human rights law standards. As such, they are a useful guidance for any State who want to implement public policies that are compliant with the human right to adequate housing.
3. In the present submission, FI does not try to provide comments on each Guideline. Rather, the comments are focussed on a limited number of paragraphs, which highlights FI's particular concerns about climate change and migration in the context of housing.
4. As a comment that is not related to any specific Guideline of the current draft, FI wishes to highlight the absence of any Guideline or even any paragraph of the right to housing in conflict situations including occupation. Since international human rights law does not stop to apply when there is an armed conflict, the protection of the right to adequate housing in such situations should be reflected in the Guidelines. International human rights but also, as relevant international humanitarian law provisions should be mentioned and should ground any recommendations and concrete measures that the Special Rapporteur may wish to put forward.

Comments on the Introductory Part

5. FI welcomes the analysis provided in the introductory part which highlights structural and systemic issues such as the question of the model of economic development in which the right to adequate housing is being implemented.

6. FI thus very much welcomes the call for a fundamental rethinking of the framework conditions in which the right has to be implemented and of the very conception of housing.

Comments on Guideline No. 1

7. As FI is aware of the limitation that the nature of the UN Guidelines implies in relation to the number of words, FI is of the view that *Implementation Measure d*) in Guideline 1 could be deleted. Indeed, the content of this sub-paragraph is already addressed in other parts of the draft Guidelines and in particular in Guideline No. 16 on access to justice.

Comments on Guideline No.2

8. In a view to increase the clarity of the narrative part of Guideline No.2, it could be useful to elaborate on the link between human rights monitoring and accountability. In particular, in paragraph 17, it could be useful to specify that human rights monitoring of policies and strategies following human rights standards and principles should be a process to evaluate and adapt policies and laws on a regular basis to respond as effectively as possible to the needs that may change and to correct failures and gaps.
9. In that regard, the Guidelines could include an encouragement to States to consider adopting framework legislations as suggested by the UN Committee on economic, social and cultural rights, with regard to several rights of the International Covenant on Economic, social and Cultural Rights.¹ Such legislations could clarify the institutional setting, the indicators and benchmarks, that are key to human right monitoring and thus accountability for the level of progress in the realization of the right to housing.
10. In addition, in *Implementation Measure a*) v., climate change should be added to the list of key obstacles to be identified and addressed. Indeed, the impact that climate change has and will increasingly have on the enjoyment of the right to adequate housing is not to be questioned any more.

Comments on Guideline No.8

11. A general remark concerns the use of private actors and business as interchangeable concepts or terms in the current draft Guideline No.8, which might cause a certain confusion or unclarity. In general, and thus in the housing sector, there might be business actors that are state-owned while there could be private actors that are not to be considered as businesses, such as non-for-profit collective housing associations. A clarification as to the use of these terms could thus benefit greatly the revised Guideline No.8.

¹ See UN CESCR, General Comment 12 on the right to adequate food, UN Doc. E/C.12/1999/5 (1999) at paragraph 29; UN CESCR, General Comment 15 on the right to water, UN Doc. E/C.12/2002/11 (2003) at paragraph 50; UN CESCR, General Comment 19 on the right to social security,

12. In that regard, the difference made between the obligations and responsibilities of businesses that are directly involved in the area of housing, meaning in the delivery of goods and services fundamental for the realization of the human right to adequate housing, and those of businesses who are not, is understandable and can be useful. Nevertheless, FI considers that this differentiation should have implications for the qualification of State obligations towards the various scenarios. These obligations and the role that States should play should in no way be undermined by the recognition of the lesser or greater power and influence of private actors. In sectors that are vital for human rights and directly qualify as services of general interest such as housing, health or education, privatization may not be an option in all circumstances.

Comments on Guideline No.9

13. Since this Guideline is tackling the right to housing for migrants, FI wishes to strongly recommend using the term “undocumented migrants”, rather than “irregular migrants”, in this Guideline and in general to make sure that this terminology is used in the whole document when it will be finalized. Even if the term “irregular migrant” is less dehumanizing and problematic than the word “illegal”, it still has a negative connotation. It gives the impression that a migrant, a human being who is entitled to the same rights and dignity as any other, is inherently outside of the law and regulations and is a criminal.

14. In relation to *Implementation Measure f)* on detention of migrants, FI considers it more appropriate to refer first and foremost to existing binding international law instruments rather than on non-binding sources as in the current draft. The list of international law norms includes, among others, all standards for the protection against arbitrary detention and all standards on the condition of detention, as enshrined in international or regional human rights treaties. It also includes provisions from other areas of international law such as refugee-law instruments or the UN Convention against Transnational Organized Crime and its Protocols.

15. In *Implementation Measure g)*, it would be very important to add the specific housing needs for LGBT migrants, to the ones identified for women and girls. In the experience of Franciscan migrant shelters, special arrangements are crucial to ensure the protection of this group of migrants against violence and against violation of their rights to dignity and privacy among others.

Comments on Guideline No.14

16. As a general comment on Guideline No. 14 concerning the climate crisis, it seems that the focus is heavily on adaptation and its impact on the right to adequate housing. While this is a fundamental dimension of the relationship between the right to housing and climate change, FI considers that mitigation measures may have a significant impact on the right to housing and should therefore be better reflected in the Guidelines.

17. In that regard, the Guidelines should mention, on the one hand, that housing may be negatively impacted by mitigation measures such as projects to reduce emissions in the field of energy like windmills or solar panels projects impacting on land of rural communities. On the other hand, the role that a human-rights compliant approach to land and housing policies can have on the maintenance of land ecosystems that provide for 40% of the carbon sequestration should be highlighted. This includes the guarantee of security of tenure and the management through agroecology and traditional indigenous knowledge.²

Comments on Guideline No.17

18. In addition to the reference to the UN Declaration on the Right to Development in paragraph 69 of Guideline No.17 on international cooperation, FI would like to encourage the Special Rapporteur to recall first States of the binding instruments that entail obligations of international cooperation, understood as the genuine endeavour of States to work together towards the full realization of human rights, including the right to adequate housing. These international standards include articles 55 to 57 of the UN Charter, as well as the article 2 of the International Covenant on Economic, Social and Cultural Rights.

² See in particular, the Report on climate change and land of the Intergovernmental Panel on Climate Change from August 2019, Summary, accessible at: <https://www.ipcc.ch/site/assets/uploads/2019/08/Edited-SPM-Approved-Microsite-FINAL.pdf>, that recognizes, among others, that: "Insecure land tenure affects the ability of people, communities and organisations to make changes to land that can advance adaptation and mitigation (medium confidence). Limited recognition of customary access to land and ownership of land can result in increased vulnerability and decreased adaptive capacity (medium confidence). Land policies (including recognition of customary tenure, community mapping, redistribution, decentralisation, co-management, regulation of rental markets) can provide both security and flexibility response to climate change." (C1.2). Also, the report recognizes that: "Agricultural practices that include indigenous and local knowledge can contribute to overcoming the combined challenges of climate change, food security, biodiversity conservation, and combating desertification and land degradation (high confidence)" (C4.3); and that "Empowering women can bring synergies and co-benefits to household food security and sustainable land management (high confidence)." (C4.4).

See also Decision 26/COP.14 on land tenure, adopted at the 14th Conference of the Parties of the UN Convention to Combat Desertification, in New Delhi in 2019.