



ACCESS TO JUSTICE FOR THE RIGHT TO ADEQUATE HOUSING

**SUBMISSION TO THE UN 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**

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1. INTRODUCTION

Amnesty International welcomes the decision by the UN 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 (hereafter the Special Rapporteur on adequate housing) to focus on access to justice for her forthcoming report to the UN Human Rights Council at its 40th session, in March 2019.

Amnesty International has been actively involved in promoting the realization of the right to adequate housing, and holding governments to account for their failure to respect, protect and fulfil this right. Although international and regional human rights standard vis-à-vis the right to adequate housing are fairly well developed, and the majority of countries around the world have committed to upholding these standards, the right remains out of reach for many of those who are discriminated against and/or living in poverty.

1.1 RIGHT TO AN EFFECTIVE REMEDY

All victims of human rights violations have the right to an effective remedy. This right has been recognized under various international and regional human rights treaties and instruments.¹ The Committee on Economic, Social and Cultural Rights (the Committee) has clarified the obligation of states to ensure an effective remedy for violations of economic, social and cultural rights under Article 2(1) of the ICESCR. The Committee has stated that: “the Covenant norms must be recognized in appropriate ways within the domestic legal order, appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place”.² The Committee has also emphasized that any person or groups who are victims of a violation: “should have access to effective judicial or other appropriate remedies at both national and international levels.”³

At the international level, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (Optional Protocol) provides an avenue for victims of violations of economic, social and cultural rights to seek accountability and remedy. Since the Optional Protocol came into force in May 2013, the Committee was given the mandate to consider complaints of violations and provide an international remedy for victims who are denied remedies at the national level. However, in order to access this mechanism, countries need to have ratified or acceded to the Optional Protocol. With only a handful of countries having ratified the Optional Protocol so far⁴, a large number of people who had their rights violated or are vulnerable to violations of the right to adequate housing cannot access this mechanism for an effective remedy.

A large number of countries around the world are also a part of regional systems that also provide for judicial remedies. For example, the European Court of Human Rights, the African Court of Human and Peoples’ Rights and the Inter-American Court of Human Rights. While the regional courts have passed landmark judgements that advance the promotion and protection of human rights⁵, accessing these mechanisms remains a resource intensive and long drawn out process for many individuals and communities fighting to

¹ 108 See, for example, Article 8 of the Universal Declaration of Human Rights, <http://www.un.org/en/documents/udhr/>; Article 2(3) of the International Covenant on Civil and Political Rights, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; Article 2(1) of the International Covenant on Economic, Social and Cultural Rights, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>; Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>, and Article 83 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, <http://www2.ohchr.org/english/bodies/cmw/cmw.htm>.

² UN Committee on Economic, Social and Cultural Rights, General Comment 9: The domestic application of the Covenant, UN Doc. E/C.12/1998/24, 1 December 1998, para. 2: <http://www.unhcr.ch/tbs/doc.nsf/0/4ceb75c5492497d9802566d500516036?Opendocument>

³ CESCR General Comment 14: The right to the highest attainable standard of health (Article 12), E/C.12/2000/4, 11 August 2000, para. 59: [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En)

⁴ 24 State Parties (ratifications + accessions) however only five countries opted-in to the inquiry mechanism and also only the same five countries opted-in to the inter-state complaint mechanism. See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq_no=IV-3-a&chapter=4&clang=en

⁵ See Judgment in *African Commission on Human and Peoples’ Rights v. Republic of Kenya* (Application no. 006/2012), African Court on Human and Peoples’ Rights, (2017), *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Communication No. 155/96, para 60, and *Saramaka People v. Suriname*, Inter-American Court of Human Rights, 2007

protect their human rights. Furthermore, most of these mechanisms require applicants to have exhausted domestic avenues for redress before applying to the international courts.

In this context, access to judicial remedies at the national level becomes even more critical for upholding human rights. Amnesty International has found that the lack of access to effective remedies is one of the most significant barriers that individuals and communities face when trying to claim their right to adequate housing. The lack of implementation of court orders is a particularly egregious denial of effective remedies to victims.

Amnesty International has focused on various failures of governments to provide effective remedies to victims, ranging from lack of legal protection, legal aid, inadequate frameworks for reparation, failure to prohibit forced evictions, gaps in accountability mechanisms etc. Some of these areas are highlighted in our general recommendations at the end of this submission. However, this, submission in response to the call for contributions from the Special Rapporteur on adequate housing, focusses in particular on non-implementation of court orders as an important component of the right to remedy and access to justice for victims of human rights violations.

2. FAILURE TO IMPLEMENT COURT ORDERS

2.1 ITALY

For decades, Italian authorities have fostered residential segregation of Roma, with local and regional government persistently advancing “camps” as the only available and appropriate housing solution for Roma. Since 2012, the European Commission has been investigating allegations of widespread and systematic discrimination and segregation of Romani adults and children by Italian authorities in relation to numerous forced evictions, discrimination in access to housing, and the creation and maintenance of ethnically segregated camps.

In 2008, with the introduction of the so-called “Nomad Emergency”, Italian forcibly evicted Roma communities, and pursued policies which fostered residential segregation. Such discriminatory policies persisted even after Italy’s highest administrative court, the Council of State, struck down this state of emergency in November 2011. The adoption of the Inclusion Strategy followed and was welcomed as a measure that would advance the rights of Roma, one of Europe’s most marginalized communities. However, despite the Inclusion Strategy, Amnesty International along with other national and regional NGOs, continued to document policies and practices by Italian authorities that prevent Roma from enjoying their right to adequate housing on an equal footing with the rest of the population.

The most recent authorized camp opened in Rome as part of the Nomad Plan was La Barbuta, which was constructed with the specific intention to use it only to house people of Romani ethnicity. It was opened on 18 June 2012, seven months after the Council of State had declared the “Nomad Emergency” unlawful and two years after the European Committee of Social Rights had ruled against Italy in *COHRE v. Italy*.⁶

The La Barbuta camp is not only an example of a large segregated camp opened after the adoption of the Inclusion Strategy, but also an example of the non-implementation of court orders and therefore the denial for access to justice for the Roma community. Despite the Council of State’s decision in November 2011 annulling the state of emergency and all resulting measures and decisions, the Municipality of Rome completed the construction of La Barbuta camp in 2012 and proceeded to assign housing units in the camp to Romani families only, in June 2012. These included many families forcibly evicted from the camp of Tor de’ Cenci.⁷

La Barbuta was built to host up to 880 people in some 160 prefabricated units – the biggest measuring 40m², and has all the features of a typically segregated large camp. Sandwiched between railway tracks, Rome’s orbital road and the runway of Ciampino airport, it is located away from other neighbourhoods and in an area where, under regulations governing land use around airports, residential buildings could not be erected. The closest shops, schools, health care services are in the town of Ciampino, about 2.5 km away.

⁶ *Centre on Housing Rights and Evictions (COHRE) v. Italy* Complaint No. 58/2009, decision on the merits of 25 June 2010, para 58

⁷ See Italy: Romani families unlawfully evicted from Tor de’ Cenci camp, Rome (Index: EUR 30/017/2012), 28 September 2012

To go anywhere from the camp, residents need to walk along a main road with no pavement. Local NGOs expressed concern that air and noise pollution due to the proximity of the airport could put the health and safety of the inhabitants at risk. Heightening the sense of separation, fences run all around the camp.⁸

Amnesty International, campaigned with local and international non-governmental organizations for a genuine consultation with the families of Tor de' Cenci regarding alternative housing solutions, and to stop the construction of La Barbuta and the transfer of Romani families there. The organization intervened with a supportive amicus curiae brief in the case brought by Associazione Studi Giuridici sull'Immigrazione and Associazione 21 Luglio, Italian non-governmental organizations, against the Municipality of Rome in 2012.

The case sought the court's recognition of the discriminatory nature of La Barbuta. In a landmark ruling, on 30 May 2015 the civil section of the Tribunal of Rome found that the Municipality of Rome had discriminated against Romani families by housing them in the segregated La Barbuta camp. The court ordered that the municipality stop the discriminatory conduct as described in the ruling and that all adverse effects of such conduct be removed.

La Barbuta has been listed among the Roma camps to be targeted for desegregation. However as of November 2018, more than three years after the court ruling recognising the inherent discrimination in the use of La Barbuta to house members of the Roma community, Roma residents of La Barbuta continue to live in racially segregated housing in violation of their human rights.

2.2 KENYA

The Constitution of Kenya recognises the right to adequate housing. Article 43 (1b) of the Constitution of Kenya states: "Every person has a right to accessible and adequate housing and to reasonable standards of sanitation". The High Court of Kenya has, in at least three different cases, interpreted this right to include a prohibition on forced evictions.⁹

Significantly, in a ruling concerning mass forced evictions in Nairobi, the High Court of Kenya directed the government to develop an appropriate "legal framework for evictions based on internationally acceptable guidelines". The court also called on the Kenyan parliament to enact legislation following consultation and public participation that would address the issue of forced evictions and security of tenure.¹⁰ However, little has been done by the authorities to develop a legal framework for evictions and legislation addressing forced evictions. Security of tenure remains an aspiration and forced evictions in Kenya have continued unabated. Most recently, in July 2018, Kenyan authorities carried out large-scale forced evictions in Kibera, Jomvu Madukani, City Carton, Kaloleni and Makongeni areas in Nairobi, rendering thousands of women, children and men homeless.¹¹

The case of the Sengwer Indigenous people is another example where the executive has shown a complete disregard for court orders thus denying the victims of human rights violations access to justice and remedy.

Embobut forest, the traditional home of the Sengwer, is part of the Cherangany Hills complex and is a water catchment area for large parts of Kenya. In 2009, the government of Kenya concluded that deforestation had endangered the viability of the water catchment, and that all forest residents must be resettled outside the forest. The Sengwer Indigenous peoples, having lived for many generations in the forest, state that they conserved it successfully, before the arrival of other communities created greater pressure on natural resources due to increased population.

In preparation for the evictions, the Kenyan government established the Embobut Forest Task Force, a body comprising local politicians, forestry officials, community representatives and civil society, to determine how to implement the decision to resettle all forest residents. On 22 March 2013, Sengwer representatives submitted a petition at the High Court of Eldoret, seeking a declaration that the evictions would violate their constitutional right to land and to protection of their culture, and calling on the court to stop the evictions. On 26 March 2013, the court issued an injunction requiring government agencies not to interfere "with the

⁸ These were initially equipped with video-surveillance cameras, as in all other large authorized camps of the capital, but the systems are currently not functioning anymore.

⁹ Ibrahim Sangor Osman & 1222 Others v the Minister of State for Provincial Administration and Internal Security and 10 Others (2011); Susan Waithara and 4 Others v the Town Clerk, Nairobi City Council and 2 Others, 2011.

¹⁰ Satrose Ayuma and Ors. vs. The Registered Trustees of the Kenya Railways Staff Retirement Benefit Scheme and Ors. in the High Court of Kenya at Nairobi, Petition No. 65 of 2010 para 109

¹¹ See Amnesty International, 'Forced Evictions Impoverish Communities' <https://www.amnestykenya.org/media-centre/news-releases/forced-evictions-impoverishes-communities.html>

petitioners' occupation, control and quiet enjoyment of the land they and the members of the Sengwer community enjoy at the Embobut forest".¹²

However, despite the injunction, on 12 December 2014, at the culmination of the Embobut Forest Task Force process, a notice was issued by the County Commissioner to all forest residents to vacate the forest by 3 January 2014. On 5 January 2014, Kenya Forest Service (KFS) guards and police moved in to the forest to carry out mass forced evictions and through January and February burned down between 800 and 1,500 Sengwer homes.

Although the High Court injunction has been periodically renewed and its direction to the state remains in force, the state has continued to forcibly evict the Sengwer. The KFS guards have burnt at least another 1031 homes of the Sengwer since the mass forced evictions of 2014. Between December 2017 and April 2018, community representatives reported that armed KFS guards burned 341 houses. Sengwer elder Paul Kiptuka was shot at by forest guards, who have also burned down his house twice since December 2017. On 16 January 2018, community representatives reported that KFS guards shot and killed Robert Kiroitch Kibor and seriously injured David Kosgei Kiptilkesi in Embobut forest. An independent fact-finding mission led by the Kenya National Commission for Human Rights concluded that "[t]he KFS Rangers in Embobut played a role in the death of Robert Kiroitch and occasioned the injury suffered by David Kosgei".¹³ At the time of submission, Amnesty International had received new reports of KFS guards using firearms and burning Sengwer huts in Embobut forest.

2.3 NIGERIA

Amnesty International has documented violations of the right to adequate housing in Nigeria for almost a decade. The 1999 Constitution of Nigeria does not recognise housing as a justiciable right even though it mandates the state to provide adequate shelter for all citizens (amongst other economic, social and cultural rights).¹⁴ There is also the broader problem of non-implementation of court judgments, even when courts have found that forced evictions violate other rights. For example, even where the courts in Nigeria have found forced evictions to be in violation of the constitutionally protected right to freedom from cruel, inhuman and degrading treatment, the executive has ignored the ruling and continued to forcibly evict people.

In October 2016, the governor of Lagos State announced that for security concerns, authorities would demolish all informal settlements along the state waterfronts and creeks in the state. Following this, Otodo-Gbame and 13 other waterfront communities initiated a legal action against the government, seeking to enforce their human rights.¹⁵ The communities argued that the threatened demolition, without adequate notice and safeguards against forced evictions, would result in the violation of their fundamental rights to life, fair hearing, property, adequate housing, education, livelihood, and freedom from cruel inhuman and degrading treatment. These rights are guaranteed under the African Charter,¹⁶ the International Covenant on Economic, Social and Cultural Rights,¹⁷ and the 1999 Constitution of the Federal Republic of Nigeria (Nigerian Constitution).¹⁸

On 7 November 2016, the Lagos State High Court, granted an interim injunction restraining the government and its agents from demolishing the homes of the claimants, pending the hearing of the case.¹⁹ Despite this injunction, Lagos State authorities carried out forced evictions on 9, 10 and 11 November 2016 which rendered thousands of people homeless.

¹² ¹² Petition no. 6 of 2013 at the High Court of Kenya at Eldoret (*David Kiptum Yator, Luka Toroitich Kiraton, Joseph Cheptorus v. The Attorney General, the Kenya Forest Service, Zonal Forest Manager (Marakwet District), the District Commissioner (Marakwet East District), the National Land Commission*) 22 March 2013

¹³ Kenya National Commission on Human Rights, "An Interim Report of the High-Level Independent Fact-Finding Mission to Embobut Forest in Elgeyo Marakwet County", April 2018.

¹⁴ 19 Cap C23, Laws of the Federal Republic of Nigeria, 2004

¹⁵ *Akapo Agemo & Ors v. Attorney General of Lagos State & Ors*, Suit No. LD/4232MFHR/16. The Governor, Attorney General, The Commissioner of Physical Planning and Urban Development and the State Commissioner of Police were sued as defendants in this case.

¹⁶ Nigeria has domesticated this treaty via the African Charter of Human and People's Rights (Ratification and Enforcement) Act, 1983.

¹⁷ Nigeria ratified this treaty in 1985.

¹⁸ High Court of Lagos State, Lagos Judicial Division, *Akapo Agemo & Ors v. Attorney General of Lagos State & Ors*, Suit No. LD/4232MFHR/16- Judgment, 21 June 2017.

¹⁹ High Court of Lagos State, Lagos Judicial Division, *Akapo Agemo & Ors v. Attorney General of Lagos State & Ors*, Suit No. LD/4232MFHR/16- Ruling, 7 November 2016.

On 26 January 2017, the High Court held, in an interim judgement, that the demolition and threatened demolition of Lagos' waterfront communities, without adequate notice or provision of alternative housing, amounted to cruel, inhuman and degrading treatment or punishment in violation of Section 34 of the Nigerian Constitution. The Judge also ordered the parties to explore an out of court settlement through mediation.²⁰ However, no meetings took place between the government and the community. On 29 March 2017, the Lagos State Government officially withdrew from the ordered mediation process.²¹ Instead, it carried out forced evictions in Otodo-Gbame on 17 and 21 March and on 9 April 2017.

As a result of the persistent violations of the orders of the Court, the waterfront communities filed contempt of court proceedings against the defendants. On 21 April, the court found that the actions of the defendants amounted to contempt of court. It however held that the Governor and those acting on his behalf had constitutional immunity which protected him against criminal liability. This shielded the authorities from accountability for repeatedly violating court orders²² and made it impossible for the court to enforce the remedies it had earlier granted to the evictees.

On 21 June 2017, the Lagos High Court held that evictions without resettlement are unconstitutional. It restrained the government from undertaking further forced evictions and ordering it to consult with affected residents and evictees with a view to resettling them within the state.²³ On 28 June 2017, Lagos State announced that it had filed an appeal in the Lagos division of the Court of Appeals against this decision which at the time of submission is pending.²⁴

Lagos State authorities failed to respect the court injunctions and orders against forced evictions. The remedies granted by the court to the Otodo-Gbame evictees and residents of the other threatened waterfront communities have been ignored by the government thereby undermining both the rule of law and their right to an effective remedy.

3. KEY RECOMMENDATIONS

Amnesty International has presented the above examples of the failure of states to implement court orders that protect the right to adequate housing to highlight a key barrier to access to justice. As seen in the cases of Italy, Kenya and Nigeria, if court orders are disregarded, it not only makes the remedy provided meaningless but also signals impunity for states and private actors to continue to act in a manner that causes or contributes to human rights violations. In light of this, Amnesty International presents the following recommendations to the Special Rapporteur for consideration to be included in the upcoming report on access to justice in the context of the right to adequate housing:

To States:

- Ensure that court orders are implemented as a matter of priority and that the rule of law is upheld.
- Ensure that court rulings as well as injunctions that protect human rights including the right to adequate housing are duly communicated to all arms of the state machinery including the police and local administration.
- Identify and remove all barriers to access to justice, especially in the case of the right to adequate housing and for those who face discrimination or belong to disadvantaged groups.
- Take steps including legislative changes where necessary to ensure that authorities and government bodies are not provided with immunity in the context of contempt of court proceedings in cases concerning human rights violations.

²⁰ High Court of Lagos State, Lagos Judicial Division, Akapo Agemo & Ors v. Attorney General of Lagos State & Ors, Suit No. LD/4232MFHR/16- Ruling, 26 January 2017.

²¹ NSISF, 'Lagos State Government Unilaterally Withdraws from Court-Ordered Mediation Process on Demolition Threat to Lagos Waterfronts', 29 March 2017.

²² High Court of Lagos State, Lagos Judicial Division, Akapo Agemo & Ors v. Attorney General of Lagos State & Ors, Suit No. LD/4232MFHR/16- Ruling, 12 April 2017.

²³ High Court of Lagos State, Lagos Judicial Division, Akapo Agemo & Ors v. Attorney General of Lagos State & Ors, Suit No. LD/4232MFHR/16- Judgment, 21 June 2017.

²⁴ Lagos State Government, Lagos Appeals Verdict Directing Resettlement of Otodo Gbame community, 28 June 2017. www.lagosstate.gov.ng/blog/2017/06/28/lagos-appeals-verdict-directing-resettlement-of-otodo-gbame-community/.

- Adopt a moratorium on mass evictions until adequate legal and procedural safeguards are in place to ensure that all evictions comply with international human rights standards and national laws.
- Introduce national legislation that explicitly prohibits forced evictions and sets out safeguards that must be strictly followed before any eviction is carried out. This law should be based on the UN Basic Principles and Guidelines on Development-based Evictions and Displacement and comply with international human rights standards.
- Provide legal aid where necessary, to victims of human rights violations, including violations of the right to adequate housing.
- Provide effective remedies and reparation to all victims of violations of the right to adequate housing. Such reparation should include, among other things, adequate alternative housing for all those who cannot provide for themselves, compensation for all losses, and guarantees of non-repetition.

To National Human Rights Institutions:

- Monitor the implementation of court orders that impact human rights including the right to adequate housing.

To the Committee on Economic, Social and Cultural Rights:

- Ensure that states parties are called upon to present and explain their record of implementing court decisions that promote economic, social and cultural rights.
- Ensure that concluding observations include clear recommendations on access to justice and the implementation of court orders with a view to upholding the right to remedy.

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