

**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,
Ms Leilani Farha**

**Written comments on the draft general comment on children in street situations
(Zero-draft: 10 December 2015)**

Introduction

The present document is submitted by 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, Leilani Farha. The Special Rapporteur welcomes the work of the Committee on the Rights of the Child in preparation of its upcoming General Comment on Children in Street Situations. Her comments are based on a zero draft dated 10 December 2015 as kindly shared for her consideration prior to the consultation.

The Special Rapporteur is grateful for the opportunity to join the Committee in a consultation held on 14 January 2016 at 18:15-19:15 (GVA time) via skype. Her thematic report to the presented at the 31st session of the Human Rights Council (A/HRC/31/54- advanced edited version enclosed) focuses on homelessness and the enjoyment of the right to adequate housing and to non-discrimination as well as to wide range of other human rights, including the right to life.

The following sections summarize her main comments as discussed during the consultation. The Special Rapporteur reiterates her interest and willingness in engaging with the Committee in future dialogue about this general comment and in providing suggestions and contributions to a more advanced draft.

General comments

- In the draft general comment, the Committee rightfully places an emphasis on the important need to protect the rights of the child once they find themselves in street situations. The draft briefly mentions also the need to take into account children's best interests and dignity. The focus is placed in the intersection between survival and civil and political rights; as well as the participation and inclusion of the population.
- At the same time and in view of the importance of providing the right balance between addressing vulnerabilities and ensuring protection of the children of various ages in street situations, she wishes to underline that it would be essential to make a clear statement about the fact that it is unacceptable that millions of children around the world live in deplorable conditions, with impunity, and to explicitly recognize that this situation constitutes a violation of several human rights, notably the right to adequate housing and the right to life. She notes that the Committee has made reference to this situation as a violation upfront in concluding observations and other general comments

- In this connection, the Special Rapporteur suggests that it would be extremely useful to clarify and provide further guidance to all levels of governments on the steps that they must take, including the resource implications, either immediately or progressively in order to prevent the conditions that cause children from unnecessarily being connected to the street and fulfil their binding human rights obligations under the Convention. The Special Rapporteur notes that it would be worth underscoring that the State's failure to implement the right to housing for children and their families in accordance with Article 27 of the Convention on the Rights of the Child is one of the main reasons why some children find themselves in street situation in the first place.
- The Special Rapporteur wishes to highlight that it would be equally important to address in greater detail the lack of accountability on the part of States which enables or contributes to the conditions that cause children to be in street situations and to better ensure access to effective remedies.
- The Special Rapporteur is of the view that an emphasis should be placed on the fact that the failure to implement Article 27 and the accompanying impunity resulting in street connection and children's homelessness constitute in and of themselves gross violations of children's rights. She considers that there is a need for better balance between the positive obligations on States to prevent the conditions that cause children to be street connected or the deprivation of the right to housing and the duty to protect children once street connected. These two structural components need to be equally articulated and reflected in the general comment. The Committee on Economic, Social and Cultural Rights' General Comments No. 4 and 7 on adequate housing could be useful in this context.
- The Special Rapporteur wishes to bring to the attention of the Committee the following statement on page 10: "*children have the right to be on the streets and to form connections, particularly in the light of the failure of States to provide rights-respecting alternatives for their survival and development*" This statement could imply that it is acceptable for thousands of children to find themselves connected to the street in all situations. However, homelessness, which is at the most extreme end of this spectrum, does not appear to be addressed as a violation of human rights or a situation of extreme vulnerability, in particular for small children. The Special Rapporteur considers that there is a need for further clarity and consistency on this aspect throughout the document.
- The Special Rapporteur would also suggest that the Committee consider differentiating general statements by some kind of age bracket where possible. For instance, some aspects included in the current draft seem to apply more to adolescents or youth, and drafting would be different/more nuanced if consideration is given to younger children and their specific situation.
- In addition, the Special Rapporteur is of the view that it would be useful to further highlight the intersectionalities and linkages in the section on obligations, placing an emphasis on the need to involve cross-sectional ministries.

Specific comments

- The Special Rapporteur is of the view that the section on discrimination could be further strengthened by drawing from the definition elaborated in the Convention on the Rights of Persons with Disabilities, as the most recent instrument, as well as General Comment 20 of the Committee on Economic, Social and Cultural Rights.
- In relation to the right to life, the Special Rapporteur notes that the Committee on the Rights of the Child has an opportunity to influence the work of the Human Rights Committee which is in the process of drafting a general comment of the right to life. Under paragraph 16 on page 9, the Special Rapporteur would suggest to make reference to the *right to life* as opposed to *right to quality of life* in line with the language of international human rights law.

Some concrete recommendations

The Special Rapporteur wishes to offer the following recommendations for the Committee's consideration:

- Reference to the standards should be grounded on existing human rights law and jurisprudence on economic social and cultural rights;
- Make explicit reference to the CESCR Committee's General Comments 4 and 7 on the right to adequate housing;
- Prevention should be addressed more prominently in the general comment in addition to the need to protect children who are already in the street;
- There is a need for a distinct section on obligations which could highlight what States must do either immediately or progressively to fulfil their obligation under the Convention;
- Address the lack of accountability for States' failure to implement the right to housing as a cause in violation with article 27 of the Convention and international human rights law;
- Address in greater detail access to remedies and to justice, including legal aid.

END
1 February 2016