

DRAFT

Suggestions and comments received by

**UN-HABITAT
Housing Unit - Housing and Slum Upgrading Branch,
UN-Habitat, Nairobi, Kenya**

Guidelines for the implementation of the right to adequate housing

Special Rapporteur on the right to adequate housing,

Ms. Leilani Farha

Draft for Consultation

Deadline for written comments: 18 November 2019

Table of Contents

I. Introduction	<u>3</u>	Deleted: 2
II. Guidelines for the implementation of the right to adequate housing	<u>5</u>	Deleted: 4
Guideline No. 1	<u>5</u>	Deleted: 4
Recognize the right to housing as a fundamental human right in national law and practice	<u>5</u>	Deleted: 4
Guideline No. 2	<u>7</u>	Deleted: 5
Design, implement and regularly monitor comprehensive strategies for the realization of the right to housing	<u>7</u>	Deleted: 5
Guideline No. 3	<u>8</u>	Deleted: 7
Ensure the progressive realization of the right to adequate housing in compliance with the standard of reasonableness	<u>8</u>	Deleted: 7
Guideline No. 4	<u>9</u>	Deleted: 8
Address discrimination and ensure equality	<u>9</u>	Deleted: 8
Guideline No. 5	<u>12</u>	Deleted: 10
Ensure gender equality in housing	<u>12</u>	Deleted: 10
Guideline No. 6	<u>13</u>	Deleted: 12
Eliminate homelessness in the shortest possible time	<u>13</u>	Deleted: 12
Guideline No. 7	<u>15</u>	Deleted: 13
End criminalization and discrimination on the ground of homelessness or housing status	<u>15</u>	Deleted: 13
Guideline No. 8	<u>17</u>	Deleted: 15
Clarify the obligations of businesses in relation to the right to housing and address financialization of housing	<u>17</u>	Deleted: 15
Guideline No. 9	<u>19</u>	Deleted: 17
Ensure the right to housing for migrants	<u>20</u>	Deleted: 18
Guideline No. 10	<u>22</u>	Deleted: 19
Ensure meaningful participation of all those affected in the design, implementation and monitoring of housing policies, programs and strategies	<u>22</u>	Deleted: 19
Guideline No. 11	<u>24</u>	Deleted: 21
Specify the responsibilities of each level of government and ensure co-ordination and accountability for the realization of the right to adequate housing	<u>24</u>	Deleted: 21

Guideline No. 12	<u>25</u>	Deleted: 22
Upgrade informal settlements incorporating a human rights-based approach	<u>26</u>	Deleted: 23
Guideline No. 13	<u>27</u>	Deleted: 24
Prohibit forced evictions and prevent any evictions	<u>27</u>	Deleted: 24
Guideline No. 14	<u>29</u>	Deleted: 26
Review all housing and related policies to ensure their environmental sustainability and develop and implement strategies to address the effects of the climate crisis on the right to housing... <u>29</u>	<u>29</u>	Deleted: 26
Guideline No. 15	<u>30</u>	Deleted: 27
Ensure effective monitoring and accountability mechanisms..... <u>30</u>	<u>30</u>	Deleted: 27
Guideline No. 16	<u>32</u>	Deleted: 29
Ensure access to justice for all aspects of the right to housing	<u>32</u>	Deleted: 29
Guideline No. 17	<u>34</u>	Deleted: 31
Undertake international cooperation to ensure the realization of the right to adequate housing	<u>34</u>	Deleted: 31
..... <u>34</u>	<u>34</u>	Deleted: 31

I. Introduction

1. This is the final report of the Special Rapporteur on the right to adequate housing, Ms. Leilani Farha, to the Human Rights Council. Based on her experiences during the six-year mandate and reflecting on the present state of affairs in relation to the right to housing globally, the Special Rapporteur is presenting framework guidelines for the implementation of the right to housing.

2. There is now only a decade remaining for States to reach target 11.1 of the Sustainable Development Goals, upgrade informal settlements and ensure adequate housing for all. More than 1.8 billion people lack adequate housing and the number of people living in informal settlements has now surpassed 1 billion.¹ Throughout the world, it is estimated that 150 million people are homeless² and 15 million are forcibly evicted every year.³ Too often, reported progress in upgrading has only moved residents of informal settlements from their communities, often against their will, into housing units in locations with no access to work, productive lands, public services or community life.

A lot of what has gone wrong with cities is related in one way or another to housing. The way housing is being produced and consumed has shaped urban growth, regrettably, in many cases, by producing cities that are fragmented, unequal and dysfunctional. The sustainable future of cities and the yields of urbanization will therefore strongly depend on facing and tackling housing challenges⁴.

¹ <https://unstats.un.org/sdgs/report/2019/goal-11/>

² <https://yaleglobal.yale.edu/content/cities-grow-so-do-numbers-homeless#targetText=Based%20on%20national%20reports%2C%20it's,population%2C%20may%20lack%20adequate%20housing.>

³ <https://fe.witness.org/>

⁴ In its resolution HSP/GC/25/L.6, the 25th Session of the Governing Council of UN-Habitat "Takes note of the 'Housing at the Centre approach', which positions housing at the centre of national urban policies and of cities, and encourages the United Nations Human Settlements Programme and member States to consider the implementation of tools and mechanisms to promote inclusive housing finance at the national and local levels to bridge the housing gap and to contribute to the progressive realisation of the right to adequate housing for all."

Commented [A1]: For your consideration: We felt some additional intro paragraphs on the severity of housing and how it is shaping our world today might be missing. This paragraph is taken out from the Housing at the Centre Approach, by UN-Habitat which is a position on housing approved by a resolution from the agency's governing council.

Formatted: Indent: Left: 0 cm, First line: 0 cm, Tab stops: Not at 1.8 cm

Formatted: English (United Kingdom)

Formatted: Indent: Left: 0 cm, First line: 0 cm

3. Private developers and investors now dominate housing systems in an unprecedented fashion, often divorcing housing from its social function by treating it as a commodity for speculation. Informal settlements and affordable housing where lower income residents live in cities have become prime targets for private equity firms and pension funds looking for undervalued “assets”. These assets are used to park, grow and leverage capital and often to transform affordable housing into housing for the affluent. Programs focused on housing-supply have failed to address these broader systemic patterns at play or challenge the structural causes of the current human rights crisis in housing.

4. This global housing crisis is not like any previous crisis. It is not caused by a decline in resources or economic downturn but by economic growth, expansion, unbridled accumulation and growing inequality. Like the climate crisis, it is linked to a flawed and unsustainable model of development and prosperity. Housing has become a key driver of growing socio-economic inequality in most countries, increasing wealth for those who own housing and driving those who do not into greater debt and poverty.⁵ Homelessness has increased most dramatically in the wealthiest cities, in global financial capitals and centres of new technology. Many States seem to be taking one step forward and two steps back, implementing piecemeal protections and programs to build housing while abdicating responsibility for structural changes that erode their capacity to govern housing systems and to protect fundamental human rights in so central an aspect of peoples’ lives.

5. This raises unique challenges for the implementation of the right to housing. Tinkering around the edges of an unsustainable model of economic development will not work. The right to housing must be implemented in a manner that changes the way housing is currently conceived, valued, produced and regulated.

6. There are grounds for hope that this is possible. Civil society and Governments, from local to national, are now realizing that the housing crisis is in fact a human rights crisis and that to address it, housing must be reclaimed as a human right. Many cities have joined forces in a global movement initiated by the Special Rapporteur in conjunction with the OHCHR and United Cities and Local Governments, committing to a fundamental shift in order to treat housing as a human right rather than as a commodity. Neighbourhoods and communities around the world are organizing against development, touristification and speculation where it threatens their right to adequate housing.

7. There remains, however, a lack of clarity among many in government and in civil society, about what it actually means to implement the right to housing in a comprehensive and effective manner so as to meet these unprecedented challenges. Officials report on progress made in various programs to create additional housing units or point to protections put in place to prevent forced evictions, but have no answer when asked about the fact that increasing numbers are living in homelessness, informality, or facing mass displacement because of luxury development and unregulated financial markets.

8. Developing a deeper understanding of how to implement the right to housing as an overarching framework for law and policy will transform unsustainable housing systems into systems that have solid social, cultural, environmental, and economic sustainability principles while preserving communities, promoting inclusion and reclaiming the vision of adequate housing for all – a commitment that is central to the Sustainable Development Goals.

9. Fortunately, there is an existing framework in international human rights law from which States and rights-holders can draw. The content of the right to adequate housing has been the subject

Commented [A2]: As well as High-middle income countries who still have people living in precarious housing conditions are also seeing a rise in homelessness in mayor cities.

The term Centres of new technology does not sound familiar. Are these Tech-hubs? Such as?

Commented [A3]:

Commented [A4]: I would add besides these factors, that gov. officials have no data or answers when AFFRODABILITY come s into play. What sector of the population can afford a home in given city X? Because of this, people are homeless, displaced, living in informality, etc.

Deleted: e

Deleted: e

⁵ See, for example, UN-Habitat 2016, p. 53.

of extensive commentary and jurisprudence within the international human rights system and has been a central focus of human rights advocacy globally.⁶

10. The guidelines elaborated here build on the normative standards that have emerged from this jurisprudence, engagement with States and stakeholders and the experiences and recommendations of the Special Rapporteur. They do not attempt to identify or list all State obligations related to the right to housing. Rather, they describe the key elements needed for the effective implementation of the right to housing as it has been elaborated under international human rights law, focusing on the need for a comprehensive and coherent approach capable of engaging with current challenges. All the guidelines are grounded in the core human rights claim at the heart of the right to housing - the right to a home in which to live in peace, security and dignity – and the commitment to ensure the full realization of that right for all, within a reasonable period of time.

11. The guidelines primarily refer to the obligations of States as the primary duty-bearers under international human rights law. In this report, the term ‘States’, it should be noted, includes all levels of government, from the local to the national, all actors exercising any governmental authority, and all branches of government, including judicial and quasi-judicial bodies responsible for ensuring access to justice for the right to housing. Moreover, the Guidelines recognize the central role to be played by businesses, financial institutions, investors, individuals and non-governmental organizations in the realization of the right to housing, emphasizing the obligations of States to regulate and facilitate actions by businesses and private actors to further the realization of the right to housing. The guidelines also recognize that States must support and meaningfully engage with civil society, indigenous peoples, communities and experts. States also have obligations of international co-operation, assistance and collaboration, recognizing that a global human rights crisis in housing can only be addressed through a global human rights-based response.

Commented [A5]: Suggestion: its not the role for private sector to play what matters, but the regulation of their role by member states. So its not about recognizing their role, but recognizing the need to regulate it right?

Commented [A6]: Instead of noting indigenous peoples: Other interest groups? In order to avoid enumerating all necessary groups in a vulnerable situation that should also be engaged by states.

II. Guidelines for the implementation of the right to adequate housing

Guideline No. 1

Recognize the right to housing as a fundamental human right in national law and practice

12. Most States have formally recognized the right to housing under international human rights law. However, homelessness and inadequate housing are frequently seen only as matters of socioeconomic policy and housing and social programmes, insulated from rigorous human rights accountability.⁷

13. Adequate housing is intimately connected to “the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family”,⁸ the cornerstone of international human rights. It has implications for almost every other human right, including the right to life, to health, to physical integrity, to privacy, to water and sanitation. An estimated one third of deaths worldwide are linked to poverty and inadequate housing. The death rate among homeless people has

⁶ CESCR, General comments nos. 4 and 7; Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18, Annex); Guiding Principles on Security of Tenure for the Urban Poor (A/HRC/25/54); and Communications under the Optional Protocol to the ICESCR. See for example, communications no. 5/2005 and no. 2/2014.

⁷ A/69/274, para.18; A/71/310, para. 5.

⁸ UDHR, preamble

been found to be ten times higher than for those who are not homeless.⁹ Yet these systemic deprivations of the right to life have rarely been addressed as such.¹⁰

14. Recognizing the right to housing as a fundamental human right linked to the right to a dignified life means addressing homelessness and inadequate housing not merely as programme failures but as assaults on the very core of what it means to be human.¹¹ Housing policies and programmes should be designed and implemented in a manner that embraces the value of home and community and provides for a life of dignity. Housing policies and programmes must take as a starting point that beneficiaries are rights holders, not recipients of charity, and are generally experts in their own lives.

Implementation Measures:

- a) The right to adequate housing should be enshrined in constitutional or national law as an enforceable right and integrated into all relevant legislation, regulations, policies, programs, budgeting, planning and inter-governmental agreements.
- b) States should formally recognize the interdependence and indivisibility of the right to housing with other fundamental human rights, and in particular with the right to life, and ensure effective remedies for all violations of the right to life linked to inadequate housing or homelessness.¹²
- c) Housing policies and programmes should be designed and implemented in accordance with the spirit and letter of General Comment No. 4 (1991). This means policies and programmes must embrace the idea that housing is inseparable from urbanization and must be a socioeconomic development imperative; it transcends four walls and a roof and is about living in a place that provides peace, security and dignity.¹³ States must also ensure housing adequacy in keeping with the features identified in the Comment including security of tenure, access to services and infrastructure, affordability, habitability, accessibility, location in proximity to services such as health care, schools and employment options, and cultural adequacy.¹⁴
- d) States should ensure access to a wide range of accessible and timely recourse mechanisms, where rights-holders can identify systemic barriers to the realization of the right to housing based in their experiences, secure effective remedies and inspire meaningful structural change for the benefit of their communities.¹⁴ Human-rights institutions, ombudspersons and other independent mechanisms should be mandated to enhance accountability to the right to housing. Rights holders should also be able to seek effective remedies for violations of the right to adequate housing through courts. (see: Guideline on access to justice).¹⁵

Formatted: Font: Not Bold, Not Italic

Deleted: housing

Formatted: Font: Bold, Italic

⁹ A/71/310, paras 12ff.

¹⁰ A/71/310, para. 31

¹¹ A/HRC/37/53, para.10.

¹² See, for example, the jurisprudence of the Indian Supreme Court on the right to life and the right to housing. *Shantistar Builders v Narayan Khimalal Totame* (1990) 1 SCC 520, para 9 and *Chameli Singh v State of UP* (1996) 2 SCC 549.

¹³ CESCR, general comment no. 4, para. 7.

¹⁴ CESCR, Views adopted on communication No. 5/2015, E/C.12/61/D/5/2015, para. 15.4

¹⁵ A/71/310, para. 73.

Guideline No. 2**Design, implement and regularly monitor comprehensive strategies for the realization of the right to housing**

15. The lack of progress in realizing the right to housing worldwide, and the failure to address structural causes of homelessness and inadequate housing, points to a critical failure of most States to implement effective, comprehensive strategies for the realization of the right to housing.¹⁶

16. According to Articles 2.1 and 11.1 of the International Covenant on Economic, Social and Cultural Rights, States have an obligation to take steps “to the maximum of its available resources, with a view to achieving progressively the full realization” of the right to adequate housing, by “all appropriate means, including particularly the adoption of legislative measures.”¹⁷ The Committee on Economic, Social and Cultural Rights has emphasized that this obligation “will almost invariably require the adoption of a national housing strategy”¹⁸ and is of “immediate effect”.¹⁹

17. Yet most States have not entrenched the obligation to implement an effective plan or strategy to realize the right to housing in domestic law and policy. When strategies with timelines and goals have been adopted, often there has been little meaningful accountability or serious commitment to meeting goals.

18. In order to transform housing systems from those that create homelessness and inequality into systems that ensure the right to housing for all, States must implement rights-based housing strategies that guarantee meaningful accountability and are clearly targeted toward the goal of ensuring adequate housing for all.

Commented [A7]: Full accountability from duty bearers

Implementation measures:

- a) Housing strategies should be adopted in keeping with the Special Rapporteur’s report (A/HRC/37/53), so as to:
 - i. Recognize the right to housing as a legal right and the progressive realization of the right as a legally binding obligation.
 - ii. Establish clearly articulated human rights-based goals and timelines to achieve adequate housing for all in the shortest possible time, identifying both immediate and progressive obligations in keeping with international human rights law and providing for ongoing adjustments to respond to emerging challenges.
 - iii. Clearly delineate responsibilities of local, regional and national Governments, and ensure coordination between them and adequate capacity and resources (see guideline no. 11).
 - iv. Provide coherence and coordination to interventions and regulation in all relevant policy areas - including those related to urban planning, upgrading of informal settlements or substandard housing, income support, access to employment and services, the provision of water, sanitation, energy, health care and education, climate change mitigation and adaptation, and the protection of the environment.

Commented [A8]: Suggestion: it might make sense not to propose to articulate new goals but to mention SDG target 11.1 which is articulated based on the right to an adequate housing.

¹⁶ A/HRC/37/53.

¹⁷ ICESCR, article 2(1).

¹⁸ CESCR, General Comment, No. 4, para 12.

¹⁹ CESCR, General comment no.3, para. 1.

- v. Identify and address key obstacles to the right to housing, such as financialization, discrimination, land-grabbing, speculation, predatory lending, environmental degradation and vulnerability to natural disasters.
- vi. Promote, protect and strengthen a variety of tenure arrangements that ensure security of tenure, according priority to the most vulnerable and marginalized. (A/HRC/25/54, para. 5).
- vii. Include measures to regulate financial, housing and real estate markets to ensure that the right to housing is both protected and fulfilled (see guideline no. 8)
- viii. Include participatory mechanisms and necessary support that ensure full participation of rights holders and relevant associations in the design, implementation and monitoring of the strategies and subsequent programmes (see guideline no. 10).
- ix. Include independent monitoring and accountability mechanisms, drawing on existing institutions such as NHRI's, or establishing new ones where appropriate, for meeting these obligations and goals (see guideline no. 15).
- x. Provide for budgetary oversight and review and ensure compliance with the standard of allocating "maximum available resources" including to sub-national level governments. Mobilization of available resources includes, for example, reasonable taxation, curbing tax avoidance and corruption, and eliminating preferential tax treatment of residential real estate investment. Resource expenditure must also meet the standards of gender-responsive and participatory budgeting.
- xi. Establish or be supported by effective claiming mechanisms for the right to housing through courts, tribunals and other means, and ensure that rights holders have access to hearings to challenge barriers to housing and obstacles to progressive realization.

Deleted: according priority to those which provided security of tenure for the most vulnerable and marginalized should be accorded priority

Deleted: for

Deleted: y

Guideline No. 3

Ensure the progressive realization of the right to adequate housing in compliance with the standard of reasonableness.

19. Many of the most serious violations of the right to housing derive from the failure of States to adopt appropriate measures to address the unacceptable circumstances in which people are living. And so, while most countries have many housing policies and programmes in place, homelessness and informal settlements continue to grow. Violations of the right to housing are most commonly identified as a result of State action that deprives people of their rights, such as forced evictions. State inaction and neglect is less often identified as a violation, requiring effective remedies when States fail to progressively realize the right to housing.

20. The Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights clarifies that compliance with progressive realization under Article 2.1 of the Covenant should be assessed based on "the reasonableness of the steps taken by the State Party",²⁰ recognizing that there

²⁰ OP, Art.8.4.

may be a range of possible measures for the implementation of the right.²¹ The CESCR has clarified that reasonable measures must be deliberate, concrete and targeted towards the fulfilment of the right; be 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 transparent and participatory decision-making.²² States must require that laws and programs related to housing comply with the reasonableness standard, and that rights-holders are able to hold governments accountable to it.

Implementation Measures:

- a) States should implement the reasonableness standard into domestic law and policy related to housing so that governments and decision-makers are accountable to this standard.
- b) Governments should resolve institutional shortcomings and structural causes of the lack of housing to comply with the reasonableness standard.²³
- c) Whereas the State has discretion to choose among a variety of approaches to progressively realize the right to housing, measures chosen must fulfil the right to housing as swiftly and efficiently as possible.²⁴
- d) Reasonable housing policies and programs must ensure that rights holders have the opportunity to be heard regarding both their individual circumstances, such as being unable to afford the rent, and the structural causes that gave rise to these, such as the privatization of social housing.²⁵ To comply with the reasonableness standard, the State's response to particular circumstances should be commensurate with what is at stake for rights holders.²⁶
- e) In the adjudication of right to housing related claims, the burden rests with the State to demonstrate that it has utilized the maximum of available resources and all appropriate means to uphold the rights of the person or group concerned.
- f) States must ensure that all relevant authorities and decision-makers, including courts, are familiarized with the reasonableness standard and able to apply it to hold governments accountable to the right to housing.

Commented [A9]: All the points in this guideline are great. May we suggest to also include an obligation for states to run capacity development programmes for all relevant authorities on the Right? This will ensure particularly incisive f).

Guideline No. 4

Address discrimination and ensure equality

21. Discrimination and exclusion are at the heart of almost all violations of the right to housing.
22. Refugees, migrants, persons with disabilities, children and youth, indigenous peoples, women, LGBT, racial and ethnic minorities are disproportionately represented among those living in

Deleted: and

²¹ CESCR, Communication No. 5/2015 para 15.1. See also Sandra Liebenberg, "Between Sovereignty and Accountability: The Emerging Jurisprudence of the United Nations Committee on Economic, Social and Cultural Rights under the Optional Protocol," forthcoming, *Human Rights Quarterly* 42:1 (Jan-Feb) 2020.

²² See CESCR, general comments nos. 3 and 4. CESCR, "Statement by the Committee: An evaluation of the obligation to take steps to the "Maximum of available resources" under an optional protocol to the Covenant U.N. Doc. E/C.12/2007/1, 10 May 2007, para. 3

²³ See, for example, CESCR, Communication No. 5/2015, paras. 15.3 and 21 (c).

²⁴ *Ibid.*, para. 15.3

²⁵ See, for example, CESCR, communication no. 5/2015.

²⁶ See, CESCR, Communication No. 5/2015, paras. 15.3 and 15.5.

homelessness, informality, and inadequate housing, often relegated to the most marginal and unsafe areas to live.²⁷ Discrimination against these groups is compounded by intersectional discrimination linked to their housing status: being homeless, living in informality or in neighbourhoods with a high percentage of inadequate or dilapidated housing.²⁸ Discriminatory exclusion from housing greatly exacerbates and reinforces socio-economic inequality for these groups. In many States, the ability to buy and own housing, as well as managing housing to fulfil a social good, much more than income or any other source of wealth has become the dominant factor in perpetuating inequality.

23. These systemic patterns of discrimination are rarely identified as violations of the right to equality and non-discrimination. While most States have some form of legislated protection of the right to equality and non-discrimination, these provisions have not been applied effectively to address entrenched systemic discrimination in housing, or to reform housing policies that exacerbate inequality in housing.

24. The Committee on Economic Social and Cultural Rights has emphasized that States are obliged to address and overcome systemic discrimination and has indicated a variety of means to achieve this.²⁹ As circumstances of different groups may vary considerably, it is crucial that the responses cater for such differences³⁰ and take into account multiple and intersecting forms of discrimination. The Committee has further directed that the guarantee of equality “should be interpreted, to the greatest extent possible, in ways which facilitate the full protection of economic, social and cultural rights.”³¹

Implementation Measures:

- a) States must prohibit all forms of discrimination in housing by public or private actors. Discrimination exists if policy or law, action or inaction, has either the intention or effect of denying or impairing the equal enjoyment of the right to housing, whether directly or indirectly based on a prohibited ground of discrimination.³²
- b) States must guarantee not only formal but also substantive equality, requiring positive measures to address housing disadvantage. This means, for example, that States must prevent landlords from refusing to rent to single mothers based on their sex or family status. To ensure substantive equality, the State may also be required to provide housing subsidy to single mothers whose income is insufficient to pay for the housing they need.³³
- c) States should provide both individual and systemic remedies to discrimination, including measures to address structural causes of inequality in housing. So, for example, a person with a psycho-social disability denied access to housing in the community should be provided with housing along with necessary supports but at the same time, the State should be required to implement a program to ensure that supports for living in the community are provided to all others with similar needs (see also guideline 16).

²⁷ A/70/270, para. 38

²⁸ A/69/274, para. 46.

²⁹ See, for example, CESCR, statement on the pledge to leave no one behind, E/C.12/2019/1, para. 9.

³⁰ See, for example, European Committee of Social Rights, *European Roma Rights Centre v. Portugal*, Complaint No. 61/2010, decision of 30 June 2011, paras 19ff.

³¹ CESCR General Comment no. 9, para. 15, and no. 20, para. 40.

³² CESCR, General Comment no. 20, para. 7ff.

³³ CESCR, general comment no. 20, para. 37.

Deleted: ,

Deleted: and

Commented [A10]: Or precarious

Deleted: depilated

Commented [A11]: I added some text here: Its not only about how much stock governments own, but how they choose to use it / manage it.

- d) States should undertake on a regular basis equality analysis of housing policies be undertaken jointly with stakeholders, with a view to identifying and remedying measures that fail to promote equality.
- e) Special measures and programs designed to meet different circumstances faced by marginalized and disadvantaged groups should be identified and implemented through engagement with and participation of those groups (see also guideline no. 10).³⁴
- f) States must guarantee the right to adequate housing of children and the best interests of the child in all housing related laws, programs and decision-making. Wherever a lack of housing threatens the ability of a parent to remain with their children, appropriate housing must be provided by the State to avoid family separation.³⁵
- g) States should apply the principles of the UN Declaration on the Rights of Indigenous Peoples in the design, implementation and regular assessment of measures directed at ensuring substantive equality of indigenous peoples in housing, so as to recognize and address the ongoing consequences of colonization, forced assimilation, dispossession of lands, territories and resources.³⁶
- h) States should require universal accessible design in all housing, ensure reasonable accommodation of disabilities in all housing, whether public or private, and provide all necessary housing and supports for independent living in the community in line with the UN Convention on the Rights of Persons with Disabilities.³⁷ This includes ensuring that building codes account for an adequate percentage of housing for all types being designed following universal design.
- i) Qualitative and quantitative information on homelessness and housing adequacy, should be collected for all groups at risk of discrimination or social exclusion in order to monitor progress and inform policy-making (see also guideline no. 15).
- j) Enforcement authorities, including courts and tribunals, should receive training on equality issues in housing to avoid stigmatizing stereotypes regarding, for instance, the homelessness, people living in inadequate housing including informal settlements and encampments, temporary shelters or camps, and subsidized or social housing.
- k) States must address the potentially discriminatory impact on marginalized groups caused by renovation and redevelopment of affordable housing communities. Marginalized groups must be included in planning processes to ensure that their housing needs are fully considered. They must also be guaranteed the equal benefit of any redevelopment, including a right to adequate, affordable housing in the redeveloped community, in keeping with the Development Based Displacement Guidelines.

Commented [A12]: From UN-Habitat's side, we call on 10% of all housing stock to be allocated to universal design. The best building codes already require this percentage and caters to different demographic trends (such as elderly) as well as for persons with disabilities.

Deleted: people living in

Deleted: grossly

Deleted: of

³⁴ See, for example, CERD, general recommendations nos. 34 and 27.

³⁵ See, for example, ICRC, art. 27 and CRC, general comment no. 21.

³⁶ See further A/74/183

³⁷ See ICRPD, arts 9, 19, 28. See further A/72/128.

Guideline No. 5**Ensure gender equality in housing**

25. Women's experiences of discrimination and inequality in housing forces many of them to live in insecure, undignified and unsafe conditions, placing them at greater risk of homelessness and violence.³⁸ Women often lack security of tenure and equal rights to property, as a result of inheritance laws, customs, and traditions, which discriminate directly or indirectly against them. Access to housing and land, including through access to credit, is frequently dependent on a relationship with male family members.

26. Inadequate housing has particularly adverse impacts for women, including increasing violence within and outside the home. For example, in developing countries, women may face harassment, physical attacks and rape when having to walk long distance to fetch safe drinking water. Lack of access to latrines and to privacy, affects women adversely, particularly during their menstruation. Evictions have a disproportionate impact on women, who are often on the frontlines defending their homes. As the emotional caregivers and material providers in many households, women bear a distinct burden in the aftermath of eviction.

27. Domestic violence is both a cause and consequence of violations of the right to housing. Women's inability to remove perpetrators of violence from their homes and the lack of alternative housing options for women places women's security and lives at risk.³⁹ Many women are confronted with the horrendous choice of becoming homeless—often with their children—or staying in violent situations at home. Because women will do whatever is necessary to avoid living on the streets, they are more likely to be found among the 'hidden homeless' and denied the benefit of programs directed to the most visible forms of homelessness.

28. Ensuring gender equality in housing means empowering women to articulate and claim the right to housing in a manner that addresses their housing disadvantages experienced across all dimensions of housing.

Implementation Measures:

- a) States should ensure gender equality in housing throughout the entire life cycle, taking into consideration women's multiple roles as parents, caregivers and workers, the diverse challenges they face in terms of water provision, sanitation, and child care and work, both inside and outside the home.
- b) States should recognize the important role that access to adequate housing plays in preventing domestic violence. Immediate access to emergency shelters and prompt access to adequate permanent housing should be available to all women and girls experiencing or at risk of domestic violence.⁴⁰ Legislation should ensure that women who

³⁸ A/HRC/19/53, para. 3. For a more detailed illustration of the specific challenges faced by women with respect to housing, see also OHCHR, *Women and the Right to Adequate Housing*, (NY 2012); A/74/183, paras. 45-47; A/HRC/31/54, para 34 ff; A/73/310/Rev.1, para. 83ff.

³⁹ OHCHR 2012, p. 76. See also A/71/310, para. 24, and Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019).

⁴⁰ CEDAW, general recommendation no. 35, para 24ff. See also A/HRC/35/30.

are victims of domestic violence are able to reside in their own homes – regardless of title or formal ownership – and have perpetrators removed.⁴¹

- c) Allocation of public or social housing should prioritize women escaping violence.
- d) States should ensure that women are able to assume leadership roles, and meaningfully participate in design, and implementation of housing programmes.
- e) The independent right of women to security of tenure, irrespective of their family or relationship status should be recognized in national housing law, policy and programming.⁴²In this regard, States should review and amend or repeal, as appropriate, provisions in family, inheritance and other relevant laws that restrict women’s access to housing and land title. Customary law provisions that discriminate against women and contravene international human rights norms should not be recognized and applied.⁴³
- f) Women should be guaranteed equal access to credit, mortgages, home ownership, and rental housing, including subsidies to make up for their lower incomes.⁴⁴
- g) The differential impact on women of evictions and displacement, including vulnerability to violence and loss of access to child-care, services and other supports, must be recognized and addressed through engagement with women regarding any planned relocation or development plans.⁴⁵
- h) Gender disaggregated data and information on housing should be collected and adequate indicators should be developed, in collaboration with women’s organizations, to monitor progress in the realization of women’s equal right to adequate housing.

Guideline No. 6

Eliminate homelessness in the shortest possible time

29. Homelessness is a profound assault on dignity, social inclusion and life. It is experienced in diverse ways throughout the world - from pavement dwellers, to makeshift encampments, to huddling for warmth on top of ventilation grates in cold climates. Millions more live in deplorable housing circumstances tantamount to homelessness without adequate protection from the elements or access to water, sanitation or electricity.

Homelessness is widely becoming a global human rights crisis that has an immense impact on the rights to life, security and dignity for the most vulnerable populations. There are individual, environmental and structural causes that can all contribute to homelessness. The causes⁴⁶ are a

⁴¹ See for example, Istanbul Convention on Action against violence against women and domestic violence, art. 52. See further A/HRC/19/53, para. 36 and A/HRC/35/30.

⁴² See, for example, CESCR, general comment no. 16, para. 28; ICEDAW, arts 2(f); 15 and 16; CEDAW, general recommendations nos. 21, 29 and 34; CCPR, general comment no. 28, para.19; A/HRC/19/53, para. 68.

⁴³ See, for example, CEDAW, general recommendation no. 34, paras. 58 and 77; general recommendation no. 21, paras 28, 33.

⁴⁴ See, for example, ICEDAW, art. 13.

⁴⁵ Basic principles and guidelines on development-based evictions and displacement, para. 47.

⁴⁶ UNDESA, UN-Habitat, 2019, *State of Homelessness Expert Group Meeting, Nairobi, May*.

cumulative impact of a number of factors and can vary from poverty and unemployment to rapid urbanization, the precariousness of informal settlements and the increase of development-based evictions, conflict, climate change and natural disasters resulting in displacement, lack of food security and loss of land.

Commented [A13]: Suggested into paragraph

30. In a spiral of human rights violations, homelessness deprives those who are the most vulnerable in society of the essentials of a dignified life and renders them even more vulnerable to stigmatization, dehumanization, and death.⁴⁷ Homelessness violates multiple human rights, including rights to housing, non-discrimination, life, health, water and sanitation and freedom from cruel, degrading and inhuman treatment. Yet widespread homelessness is rarely addressed by States as a human rights violation.

Commented [A14]: Might be important to highlight what is really at stake.

Deleted: and

31. States must treat the human rights obligation to reduce and eliminate homelessness as an urgent priority, implementing immediate as well as long term responses.

Implementation Measures:

- a) All levels of government, must adopt concrete multi-pronged strategies to respond to the immediate needs of those who are currently homeless while simultaneously implementing concrete plans to reduce and eliminate homelessness “in the shortest possible time in accordance with the maximum of available resources“ with clear timelines and accountability mechanisms.⁴⁸
- b) Homelessness should be recognized as a prima facie violation of human rights.⁴⁹ States must be held accountable by courts and human rights institutions for failing to address it with the highest priority, and those affected must have access to effective remedies, both immediate and longer term.
- c) States must ensure that individuals and families in situations of homelessness are not forced to rely on emergency accommodation for extended periods and are instead provided access to secure and suitable permanent housing.
- d) States should recognize diverse experiences of homelessness among different groups⁵⁰ and provide to all persons in situation of homelessness access to emergency accommodation without discrimination on any grounds, including their migration status, nationality, ethnicity, gender, sexual orientation, disability (including mental health and addiction) or other status.
- e) States should prevent and eliminate homelessness among children and protect the rights of children in street situation as set by the Committee on the Rights of the Child in its General Comment no. 21.⁵¹
- f) Those who are homeless must be enabled to define their housing needs and participate in shaping the appropriate responses and strategies
- g) “Housing first” approaches, that centre on quickly moving people experiencing homelessness into independent and permanent housing and then providing additional supports and services

⁴⁷ For examples, see A/HRC/31/54, para 20ff.

⁴⁸ General Comment no. 4, paras.11ff.

⁴⁹ General Comment no. 3, para. 10.

⁵⁰ See the three-dimensional human rights definition of homelessness proposed by the Special Rapporteur in her report to the HRC, A/HRC/31/54. For indigenous peoples’ experience of homelessness, see A/74/183.

⁵¹ CRC/C/GC/21

as needed, must be inclusive of all who are affected by homelessness, and accompanied by all necessary supports for as long as required for independent living.

- h) States should regularly collect and publish disaggregated data on the number of persons living in different situations of homelessness including not only rough sleeping but also less visible forms of homelessness, such as staying temporarily with friends or family. States should investigate factors leading to homelessness in order to design affective strategies for its prevention and elimination.
- i) Any evictions that may result in homelessness must be prohibited and recognized under domestic law as a gross violation of human rights.
- j) States should establish preventive mechanism to avoid and reduce evictions of persons who are unable to pay their rent or their mortgages payments, which should include legal and debt counselling, provision of temporary housing benefits to make up for short term liquidity problems, debt rescheduling, and if required relocation support to more affordable housing units meeting adequacy standards.

Guideline No. 7

End criminalization and discrimination on the ground of homelessness or housing status

32. As noted in the Special Rapporteur's thematic report, homelessness defines not only a deprivation of housing but also a social group that is subject to extreme forms of discrimination, stigmatization and criminalization (A/HRC/31/54). Homeless persons are frequently depicted as morally inferior, even as vermin, subject to constant intimidation and harassment by authorities and the general public; denied access to places to shower, urinate or defecate; rounded up and driven from communities, or relocated to uninhabitable places; subject to extreme forms of violence, including hate crimes trafficking and sexual exploitation. Informal housing status also constitutes a common basis for discrimination and stigmatization.

Commented [A15]: Suggest to take out.

33. People living in poverty, and groups facing racial and other forms of discrimination are often forced to live in substandard housing, marginalized neighbourhoods, or the most precarious contexts such as "slums" where they face harassment and violence from authorities and frequently overcharged or denied access to water, sanitation, health services and other basic necessities as an attempt to exploit them or drive them from their communities.⁵²

Deleted: in

Deleted: or

Deleted:

Commented [A16]: Often the costs of basic services such as water are higher in slums than in informal settlements, or even middle income neighbourhoods. This is due to the fact that the service provision is also done informally, with no regulation, and vulnerable groups have no other choice than to comply. Such is the case for drinking water.

34. Rather than being treated as rights-holders entitled to remedies for serious violations of the right to housing, those who are homeless or living in marginalized or informal communities are treated as violators of laws and "encroachers", or disregarded at all by local authorities who feel entitled not to provide basic services on the grounds of informality.⁵³

35. The Committee on Economic Social and Cultural Rights⁵⁴ and the Human Rights Committee have recognized distinctions based on socioeconomic status, including homelessness, as a form of discrimination which must be prohibited in domestic law.⁵⁵ The Human Rights Council has called upon

⁵² A/73/310/Rev.1, para. 44.

⁵³ A/HRC/40/61, para. 41.

⁵⁴ General comment no. 20, para. 35.

⁵⁵ HRC, general comment no. 36, para. 61. [See also Communication No. 2425/2014 Whelan v Ireland, Views adopted on 17 March 2017, para. 7.12]

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.⁵⁶ States must put an end to all forms of criminalization and discrimination based on housing status and empower those who are homeless and living in marginalized substandard housing to redefine themselves as rights-holders, based on their inherent dignity and rights.

Implementation Measures:

- a) States should prohibit in legislation discrimination on the ground of socioeconomic status, including homelessness, and housing status. Effective remedies for discrimination based on these grounds must be guaranteed. In this regard, national human rights institutions, ombudspersons and others bodies must be mandated to monitor and combat discrimination against those who are homeless, living in precarious housing, or in socio-economically marginalized communities.
- b) All laws and measures that criminalize, impose fines on restrict homeless people or behaviour associated with being homeless, such as sleeping or eating in public spaces including in motor vehicles, must be immediately repealed.
- c) Discriminatory practices, such us 'deportation' or 'clearance' of homeless persons from city centres, confiscation of personal belongings, including sleeping bags or tents, must be prohibited. Forcing homeless persons against their will into shelters, hospitals, or detaining them in police custody must be prohibited and should only be authorised if strictly required to ensure the protection of the life, physical integrity, or health of the affected individual or that of other persons.
- d) Punitive policies against residents of informal settlements, such as the suspension or denial of access to basic services, or other attempts to destroy or make the places they occupy uninhabitable should be prohibited in law and immediately ceased.
- e) Laws that protect people from interference with privacy and the home should recognize the rights of people whose homes are considered informal, namely outside, including in tents, cars, in public spaces or in occupied buildings.
- f) Homeless persons and residents of informal settlements must be provided with access to information and justice both to challenge discrimination and criminalization and also to claim their right to adequate housing (see guideline no. 16)⁵⁷
- g) Disproportionate rates of incarceration of those who are homeless should be addressed as a serious form of systemic discrimination within the justice system. States should provide, within their court system, alternative procedures for dealing with homeless people facing minor charges, where the primary objective is to secure their right to housing, and break out of the cycle of criminalization, incarceration and homelessness.

⁵⁶ Resolution 31/9.

⁵⁷ A/HRC/40/61, para. 42.

Guideline No. 8**Clarify the obligations of businesses in relation to the right to housing and address financialization of housing**

36. In current conditions, the realization of the right to housing significantly relies on the private sector. Private investors, businesses and individuals develop, build, sell or rent housing. Financial institutions provide access to credit. Private households purchase, build or improve their own housing, either formally or informally, and may then rent it to others. Without an increase in current levels of public expenditure in affordable housing, it is estimated that close to 85 percent of the cost of the additional housing required in rapidly expanding cities will have to come from the private sector.⁵⁸

Commented [A17]: Important to emphasize on this, as public expenditure sometimes (more than often) goes into middle and high income related housing / urban development in complex ppp's.

37. Over the last 20 years large-scale private investment in housing has served more affluent populations – diminishing existing affordable housing stock and creating new investor-driven stock that is beyond the reach of low and middle-income households. Housing has become the ‘commodity of choice’ for corporate finance, a security for financial instruments that are traded remotely on global markets.⁵⁹ Private equity firms, pension funds, and real estate investment trusts buy up massive amounts of housing, sometimes entire neighbourhoods, in which lower income households live, which often results in raising rents or displacing communities by redevelopment plans in order to create housing and urban development for more affluent households, causing irreparable damage to communities. Investors seeking short-term profit through speculation and “flipping”, or using residential real estate to hide ill-gotten gains, has resulted in large proportions of housing stock being vacant.⁶⁰

Deleted: usually

Deleted: redeveloping

Deleted: communities in

Deleted: needed

Deleted: homes standing

38. Housing and financial markets that determine what investments are most profitable, however, are created and sustained by Governments. It is States that have failed to ensure that investment produces housing that people need and can afford.⁶¹ They have provided tax breaks to real estate speculators, “golden visas” to encourage foreign investors to buy up high-income housing, deregulated markets to allow rents to rise, and encouraged urban development that primarily produces housing for the wealthy. All of this must change if private investment is going to be harnessed for the realization of the right to housing.

Commented [A18]: Sentence not clear.

Deleted: scarce

39. The CESCR has emphasised that States should regulate and direct investment and business activity in the real estate market and financial markets by adopting “legislative, administrative, educational and other appropriate measures” to ensure that businesses contribute to and do not undermine, the realization of the right to housing.⁶² This means regulating and engaging with businesses and investors in a different way than is usually understood by requirements of corporate “due diligence” to avoid harm or negative human rights impact, as described in the Guiding Principles on Business and Human Rights (UN Doc. HR/PUB/11/04).

40. The obligations that States must impose on businesses directly involved in the development or ownership of housing are different in kind from those that apply to businesses that are not involved in providing for a human right. In the case of businesses that are not directly involved in housing, States must ensure that they do not interfere with or harm the enjoyment of the right to housing by,

⁵⁸ Jonathan Woetzel and others, “A blueprint for addressing the global affordable housing challenge” (McKinsey Global Institute, October 2014).

⁵⁹ See A/HRC/34/51.

⁶⁰ See, for example, The State of Housing in the EU 2019, <http://www.housingeurope.eu/resource-1323/the-state-of-housing-in-the-eu-2019>.

⁶¹ A/HRC/34/51, para. 12

⁶² General comment No. 24, paras. 12, 14, 18

for example, forcibly evicting residents. In the case of investors and developers engaged in the human rights area of housing, however, States must ensure not only that they do no harm, but also that their actions contribute to the progressive realization of the right to housing. The State may require them, for example, to include affordable housing in developments, to ensure that housing is not left vacant, or to redirect some of the profits made from more expensive housing to providing affordable housing.⁶³

41. In addition to regulatory measures, governments should also engage constructively with businesses and private actors to promote and facilitate business activities that contribute to the realization of the right to housing. The important role of private households in producing and upgrading housing must also be supported.

Implementation Measures:

- a) States should require full disclosure of all investments in residential housing. Local, national and international supervisory and monitoring bodies should be created, with adequate powers, to monitor and investigate business and private investor activity in housing markets. States must take appropriate measures to ensure that this activity furthers and does not undermine the realization of the right to housing.
- b) States should require review and analysis of any development or business plans that may significantly impact the right to housing of multiple households and require any changes necessary to further the right to housing.⁶⁴
- c) There are a number of measures States could take to ensure that private investment and housing related business activity is consistent with the implementation of the right to housing, including: i/adjusting taxation measures to incentivise affordable housing and discourage speculation or vacant ownership of housing or lands; ii/ enabling access to land for needed housing; iii/making affordable materials available for environmentally sustainable housing construction; iv/maintaining a rental regulatory framework that creates a predictable income stream for landlords but preserves security of tenure and affordable housing for tenants, including through rent caps or controls; v/enabling innovative financing models for affordable housing or upgrading; vi/encouraging alternatives to individual or communal tenure, social production of housing and or recognizing housing and land as commons.
- d) To address the impact of large investors on housing markets, States could: i/ remove preferential tax breaks provided to real estate investment trusts; ii/ impose a cap on the number of housing units a single firm may purchase in a particular area; iii/require the development of binding, human rights compliant “social benefits agreements” with existing residents or civil society organizations before any development is approved; iv/issuing directives for pension funds and other investors to undertake human rights impact assessments of proposed investment on the right to housing prior to investments being approved.
- e) States should take all necessary measures to prevent money laundering and tax evasion through investment in housing and real estate.⁶⁵

Commented [A19]: Also consider adding measures that between states signatories of TRAH they share this information among them; as most of these transactions that render the housing sector exclusive and unaffordable occur internationally.

Commented [A20]: Its not necessarily about owning, but about having tenure security.

Deleted: ownership

Deleted: through shared ownership

Commented [A21]: Yes, but recommendation should be expanded so that actual measures to prevent this important topic are covered.

⁶³ CESCR, general comment no. 24, para 18.

⁶⁴ CESCR, general comment no. 24, para. 16 and CRC, general comment no. 16, p.8

⁶⁵ See UN Convention against Corruption, Article 14, OECD Model Tax Convention on Income and on Capital, OECD standards to address Base Erosion and Profit Shifting; FATF, International Standards on combating money laundering and the financing of terrorism and proliferation.

- f) States should refrain from the privatization of social housing where it would reduce the capacity of the State to fulfil the right to housing. Likewise, States should avoid changing social housing units into housing that can be sold at market rates and made subject to speculation and excessive rent increases.
- g) States should ensure that all public-private partnerships in housing are subject to both initial and ongoing review for consistency with the State's obligations to respect, protect and fulfil the right to housing. Where inconsistencies are found, they should be rectified in a manner that promotes the right to housing.
- h) Banks and other lenders should be required by States to remove barriers to access to credit for women, young families, residents of informal settlements and others in need of housing financing.
- i) Consideration should be given to developing specific guidelines for financial actors in the housing market, covering real estate investment funds, pension funds, and other business actors involved in the acquisition and sale of housing, at both national and international level.
- j) States should review all laws and policies related to foreclosure, indebtedness and housing, to ensure consistency with the right to adequate housing, including the obligation to prevent any eviction resulting in homelessness as is consistent with international human rights law.⁶⁶

Commented [A22]: What about the role in states (namely cities) in engaging fully in the development and management of social/affordable housing in partnership with the private sector? This is not yet present in the guidelines and forms an important part of cities that remain the most affordable - housing-wise- these days.

Deleted: on the

Commented [A23]: Perhaps even more explicit. PPP in housing should always be directed to the production of affordable housing.

⁶⁶ CESCR, General comment no. 7, para. 16.

Guideline No. 9**Ensure the right to housing for migrants**

42. More people are on the move than at any time in history.⁶⁷ Many live in grossly inadequate housing conditions in geographically segregated areas with poor access to services and facilities, with no security of tenure, facing discrimination, poverty and economic marginalization.⁶⁸ Oftentimes, there is little coordination between migration and housing programmes. Migrants in irregular situations face even greater challenges in accessing housing. In many countries irregular migration continues to be criminalized and in some, renting accommodation to irregular migrants is a criminal offence.⁶⁹ Homeless shelters are sometimes restricted to nationals or to documented migrants and may be required to report their clients to the authorities, effectively preventing migrants from using their services.⁷⁰

Migrant groups living in cities tend to experience more difficulties in accessing housing compared to native-born populations. Due to already-constrained local resources, they face greater obstacles in accessing public housing and housing benefits, meaning that they rely more heavily on private-rented accommodation. Some of the consequences of this are included below⁷¹:

Migrants are prone to poor and overcrowded living conditions: In private rental housing, migrants can easily be discriminated against, especially when they are uninformed of their rights. Additionally, they often face greater difficulties affording adequate housing. Due to these factors, migrants are more prone to living in poor quality housing and overcrowded conditions. Overcrowding affects migrant workers in particular as they are more likely to live in 'tied' accommodation provided by their employer.

Formatted: No underline

Migrants are more vulnerable to forced evictions and homelessness: Migrants tend to lack awareness of their rights in destination countries, making them more vulnerable to forced evictions. As they are also more likely to work in irregular employment with an uncertain income, this can put them at greater risk of being evicted. These factors affect undocumented migrants especially as they are often unable to engage in formal employment and access housing through formal markets. Undocumented migrants may also fear turning to service providers for support in case they are imprisoned or deported, making them more vulnerable to homelessness.

Formatted: No underline

Migrants are often spatially segregated: Inadequate planning, combined with sudden and unpredictable influxes of migrant groups contributes to their long-term social and spatial segregation in cities. Unable to access adequate and affordable housing, migrants use any available land to settle, often in peripheral urban areas lacking proper tenure and ownership, and often prone to natural hazards. As these areas tend to have poor accessibility, migrants living there also have limited access to employment, education and health, and limited interaction with 'host' communities.

Formatted: Underline

Formatted: No underline

Formatted: No bullets or numbering

⁶⁷ In 2019, there were an estimated 272 million migrants, an increase of 23 per cent in 9 years. See UN DESA, International Migrant Stock 2019: see also OHCHR, The Economic, Social and Cultural Rights of Migrants in an Irregular Situation, 2014.

⁶⁸ CESCR, statement on The Duties of States Towards Refugees and Migrants under the International Covenant on Economic, Social and Cultural Rights (2017); A/HRC/14/30, para. 14 ff. See also: OHCHR, The Economic, Social and Cultural Rights of Migrants in an Irregular Situation, 2014.

⁶⁹ See, for example, A/HRC/14/30, para. 47.

⁷⁰ Ibid.

⁷¹ UN-Habitat (2018) Mayoral Forum for Migration and Development, Policy Brief on Housing for Migrants, Marrakech, p.2

Formatted: English (United Kingdom)

Migrants are often not included in decision-making processes: As local and national authorities often lack the financial resources and technical skills to facilitate migrant inclusion in planning, migrants do not tend to be considered in decision-making and participatory processes.

Formatted: No underline

The socio-economic costs born from the failure to address migration at the local level will be carried by local governments: Cities can benefit from centralised coordination and management mechanisms which can ensure that resources are mobilised in a way that optimises well-being and provides clear and coherent integration pathways. Local authorities have a unique capacity to bring actors together, define roles and responsibilities and establish mechanisms for information-sharing and joint action. Cities can choose to harness the potentials that migrants can bring in generating revenue and making cities more inclusive, or bear the socio-economic costs of not doing so, with increasing homelessness and unemployment rates, among many other socio-economic burdens.

Formatted: No underline

Formatted: No bullets or numbering

43. Migrant workers have been housed by employers in grossly inadequate conditions, sometimes consisting of transport containers, or make-shift accommodations, without the most basic facilities.⁷² Similarly domestic workers residing in households have been forced to sleep on the kitchen, or bathroom floors, to be deprived of privacy and vulnerable to abuse and violence.⁷³

44. States must ensure the equal enjoyment of the right to housing without discrimination for all migrants, including refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.⁷⁴

Implementation Measures:

- a) The right to housing should be explicitly recognized in migration laws and policies and be implemented consistently with international human rights law.⁷⁵ States must ensure interdepartmental coordination between migration and housing programmes, and consistency with the right to adequate housing.
- b) States should repeal or amend as necessary any law, policy, regulation or practice which denies the equal enjoyment of the right to adequate housing of migrants, irrespective of their migration status, ensuring that housing agencies refrain from engaging in discriminatory practices.⁷⁶ This means, for example, ensuring access for migrants to emergency housing for homeless persons or women escaping violence, irrespective of their status.
- c) Multiple housing alternatives should be explored to address the growing inflow of migrants and refugees, ensuring immediate access to humanitarian shelter and adequate temporary accommodation, and access to longer-term housing as soon as possible.
- d) States should monitor the housing conditions of migrant workers and impose sanctions on employers who have housed workers in inadequate conditions.
- e) Migrant women workers dealing with abuse, harassment and violence, must be provided with access to a hotline, advocate or ombudsperson and immediate access to programmes for

⁷² See, for example, A/HRC/14/30, para. 49; and A/HRC/40/61/Add.1, para. 81.

⁷³ See, for example, A/HRC/14/30, para. 54.

⁷⁴ CESCR, General Comment no. 20, para 30.

⁷⁵ See ICMW, art. 43; and CERD, general recommendation no. 30. See also Global Compact for Safe, Orderly and Regular Migration, objective 15.

⁷⁶ See, for example, CERD, general recommendation no. 30, para. 32.

relocation, support, counselling and re-employment, including the provision of alternative housing accommodation.⁷⁷

- f) States should prioritize non-custodial alternatives to detention that respect migrants' right to housing, in line with the UN Principles and Guidelines on the human rights protection of migrants in vulnerable situations and the Global Compact for Safe, Orderly and Regular Migration.⁷⁸
- g) Reception and other centres for migrants should provide separate housing for migrant women and girls who prefer such arrangements. Safe and private water, sanitation and hygiene facilities for women and girls must also be made available.⁷⁹
- h) Innovative initiatives to promote migrants' access to housing at the local level should be implemented such as when local authorities or housing associations act as guarantors to facilitate access to rental housing by migrants.⁸⁰
- i) States should ensure that housing providers are neither permitted nor required to convey information to immigration enforcement authorities which could result in punitive measures thereby discouraging them from seeking shelter. Migrants should never be criminalized for exercising their right to housing, and private actors such as landlords or civil society organizations should not be criminalized for assisting migrants to secure housing.⁸¹

Commented [A24]: Also: Promote conditions to ease migrants' access to public housing, such as awareness raising, multilingual services, reporting mechanisms for discriminatory practices etc.

Guideline No. 10

Ensure meaningful participation of all those affected in the design, implementation and monitoring of housing policies, programs and strategies

45. "Th[e] right to take part and exert influence in decision-making processes that affect one's life is inextricably linked to the most fundamental understanding of being human and the purpose of rights: respect of dignity and the exercise of agency, autonomy and self-determination".⁸² The CESCR has emphasized that participation is key to any intervention aimed at making adequate housing a reality for all.⁸³ It is "one of the core elements of human rights-based approaches aimed at eliminating marginalization and discrimination".⁸⁴

46. Yet, housing-related measures continue to be developed and implemented through top-down decision-making models, excluding affected communities. This means that housing is often ill-suited to address peoples' needs and development reinforces patterns of social exclusion. Programs that deny participation of affected groups tend to reproduce the stigmatization and exclusion that denied them their rights in the first place.

⁷⁷ See, for example, ILO Domestic Workers Recommendation, 2011 (No. 201), para. 7.

⁷⁸ UN Principles and Guidelines on the human rights protection of migrants in vulnerable situations, principle 8; and Global Compact for Safe, Orderly and Regular Migration, objective 13.

⁷⁹ See, for example, UN Principles and Guidelines on the human rights protection of migrants in vulnerable situations, principle 11.

⁸⁰ A/HRC/14/30, para. 87.

⁸¹ UN Principles and Guidelines on the human rights protection of migrants in vulnerable situations, principle 13, para. 4.

⁸² A/HRC/23/36, para. 20.

⁸³ CESCR, general comment no. 4, para. 12.

⁸⁴ UN Guidelines for States on the effective implementation of the right to participate in public affairs, para.1.

47. The Special Rapporteur has seen many housing projects where residents have had no role in decision-making and where the result has been housing in remote locations in which units that do not meet residents' needs are largely abandoned. On the other hand, housing programs designed by those who will live there tend to create vibrant, sustainable, culturally appropriate and aesthetically pleasing communities. Rather than being treated as voiceless recipients of programs designed and implemented by others, rights-based participation, with active support by all levels of government, transforms residents into active citizens and productive community members, making housing programs more affordable, effective and compliant with human rights.

Implementation Measures:

- a) The right to participation and access to information should be protected in law through constitutional or legislative provisions with institutional support for the full implementation of this right.⁸⁵
- b) Those affected by housing-related decisions must have access to more than pro forma consultations. They must be able to influence the outcome of the decision-making process, based on knowledge of their rights, access to information taking into account socio-economic, literacy, linguistic, cultural or other barriers, and having been accorded sufficient time for preparation, discussion and formulation of contributions.⁸⁶ To facilitate this, mechanisms such as community advisory committees should be established, with necessary financial and other supports for meaningful participation.⁸⁷
- c) The capacity of communities to participate in decision-making requires the provision of opportunities for community education about human rights and housing as well as the provision of technical and financial support.⁸⁸
- d) Participation must engage diverse groups to ensure that the design, construction and administration of housing reflects the cultural diversity of communities and meets the needs of all residents, including persons with disabilities, older persons, young people, religious and linguistic minorities.⁸⁹
- e) Special measures must be adopted to ensure the effective participation of all rights-holders in decision-making processes concerning them, ensuring, in particular, the equal participation of women, young people, renters, linguistic minorities, people with disabilities and marginalized groups within communities.
- f) In the case of indigenous peoples, States should ensure consultation and participation in compliance with the UN Declaration on the Rights of Indigenous Peoples and ensure the application of the principle of free, prior and informed consent.

⁸⁵ See, for example, UN Guidelines for States on the effective implementation of the right to participate in public affairs paras. 16 and 22.

⁸⁶ UN Guidelines for States on the effective implementation of the right to participate in public affairs, para. 70ff.

⁸⁷ UN Guidelines for States on the effective implementation of the right to participate in public affairs.

⁸⁸ HRC, general comment no. 25, para. 5; CESCR, general comment no. 4, para. 12. See also ICEDAW, and ICPD, art. 3; CERD, general recommendations XXVII, para. 42, and 34, para. 4, and UN Guiding principles on extreme poverty and human rights, paras. 38-39; United Nations Basic Principles and Guidelines on Development-Based Evictions and Displacement, para. 39.

⁸⁹ CESCR, General comment no. 21, particularly para. 16ff.

- g) Effective participation should be considered as a legal requirement of reasonable housing policy and decision-making, subject to effective judicial review and enforcement (See Guideline 3)
- h) Procedures and support for consultation and participation should be regularly assessed and adjusted as needed.
- i) Final decisions taken should explain how they are consistent with international and domestic human rights law and include a clear indication of how the contributions of rights holders have been taken into account.⁹⁰
- j) Effective remedies should be available and easily accessible in the event of complaints about infringement of rights during the decision-making process or by its final outcome.

Guideline No. 11

Specify the responsibilities of each level of government and ensure co-ordination and accountability for the realization of the right to adequate housing

48. Local and regional governments have been assigned crucial responsibilities related to the right to adequate housing, ranging from infrastructure development and land-use planning, to upgrading of informal settlements, navigating investor driven market-p pressures, and developing and administering housing and related programmes. International human rights obligations apply to all levels of government, without limitations or exceptions,⁹¹ yet accountability for the human right to housing continues to be viewed as attaching primarily to national level governments.

49. Local governments are confronted with the most significant challenges to the right to housing be it homelessness, migrations, or financialization, and are closest to affected communities, better able to ensure participatory decision-making and to develop innovative solutions adapted to local circumstances. Too often, however, local governments are being allocated responsibilities without a commensurate allocation of resources, knowledge, capacity and accountability mechanisms for the realization of the right to housing.⁹²

50. The allocation of responsibilities for implementing the right to housing within a State is a matter of internal decision, but it must be consistent with the obligation to realize the right to housing. It must be clear which government can be held accountable, and how. As outlined by the Committee on Economic, Social and Cultural Rights, States should ensure coordination between national, regional and local authorities for the realization of the right to housing.⁹³

⁹⁰ UN Guidelines for States on the effective implementation of the right to participate in public affairs para. 79.

⁹¹ HRC, General comment No. 31, para. 4; CESCR, general comment no. 9, para. 9; ICESCR article 28.

⁹² A/HRC/28/62, para. 5.

⁹³ CESCR, general comment no. 4, para. 12

Implementation Measures:

- a) The responsibilities of each government in relation to the right to housing should be clearly outlined in legislation, in funding agreements and in housing programs and policies.⁹⁴ States should consider providing financial and other incentives to encourage local and regional governments to adopt rights-based housing strategies. Provision should be made for promptly resolving jurisdictional questions, in accordance with the right to housing and ensuring that no one is left behind.⁹⁵
- b) Local and regional governments should implement human rights-based housing strategies in areas of their authority, with measurable goals, timelines, independent monitoring and complaints procedures. These should be properly coordinated with national strategies and consistent with the Rapporteur's thematic report (A/HRC/37/53).⁹⁶
- c) States must ensure that local rights-based housing strategies and related programs are supported by adequate financial resources, and administrative support and capacity.
- d) Local and regional governments should be encouraged to adopt human rights charters that recognize the right to housing or incorporate into municipal law a commitment to comply with obligations under international human rights law to respect, protect and fulfil the right to housing, providing for accountability mechanisms⁹⁷
- e) Housing policy and programs of all levels of government should be coordinated through national level oversight and leadership as well as by inter-governmental bodies with an explicit mandate to promote and ensure compliance with the right to housing.⁹⁸
- f) In line with the right of indigenous peoples to be actively involved in developing and determining housing programmes and to administer such programmes through their own institutions,⁹⁹ indigenous peoples should have access to adequate resources to implement the right to housing¹⁰⁰ and should establish effective accountability and monitoring mechanisms to ensure that resources are allocated in a manner that is consistent with international human rights law and promotes equality among all their members, including between women and men.¹⁰¹

⁹⁴ See, for example, A/HRC/27/59, para. 13.

⁹⁵ As indicated by the Advisory Committee to the UN Human Rights Council, in this manner "[l]ocal authorities are thus made aware of their human rights responsibilities, understanding that any failure to comply with those responsibilities will entail their liability under national law as well as international responsibility of the State as a whole. Further, such a provision imposes a clear obligation on local authorities to apply a human rights-based approach to delivering public services within their defined competences. Consequently, it may well encourage rights holders to claim their rights vis-à-vis local authorities." A/HRC/27/59, para. 31.

⁹⁶ A/HRC/28/62, para. 69. See also A/HRC/27/59, para. 26 and A/HRC/28/62, para. 76 (i).

⁹⁷ A/HRC/28/62, para. 71.

⁹⁸ A/HRC/37/53, para. 51

⁹⁹ United Nations Declaration on the Rights of Indigenous Peoples, art. 23

¹⁰⁰ UNDRIP, art. 4. See also A/73/176, para. 5.

¹⁰¹ See also UNDRIP, art. 34; and ILO C169, art. 8.2. See also A/HRC/30/41, paras. 38 and 78; and A/74/183/, para. 64.

Guideline No. 12**Upgrade informal settlements incorporating a human rights-based approach**

51. Nearly one quarter of the world's urban population live in informal settlements, often in overcrowded, insecure dwellings, in areas that are ~~prone to all kinds of~~ natural disasters, without water and sanitation, ~~at constant risk of~~ evictions and subject to preventable life-threatening illness.¹⁰² Grossly ~~inadequate informal~~ settlements are one of the most pervasive violations of the human rights of dignity, security, health and life worldwide.¹⁰³ At the same time, informal settlements can be human scale accomplishments ~~in the most adverse circumstances~~ where people create homes, community life and preserve culture.

52. States often view informal settlements as “slums” that need to be ‘cleared’. Instead of being supported to improve their housing and to liberate the capacities of their communities, residents of informal settlements are too often criminalized, denied services, ~~often forcibly and violently evicted,~~ and their homes and belongings destroyed. When they are relocated to alternative housing, it is often inadequate, ~~far from employment opportunities or community life,~~ and without access to ~~safe and affordable~~ transportation.

53. Under the 2030 Agenda for Sustainable Development, States have committed to “upgrade slums” and ensure adequate housing for all (target 11.1).¹⁰⁴ As indicated by the CESCR, a State is in prima facie violation of the right to adequate housing if a significant portion of the population does not have access to basic shelter and housing.¹⁰⁵ Instead of “eradicating” informal settlements and displacing residents to remote locations, States should engage with residents of informal settlements to build on their capacities, improve conditions and keep communities intact.

54. States must be practical. Ensuring adequate housing for all by 2030 is a target that will be difficult to meet through the creation of new housing supply alone, in light of costs and a short time horizon. It makes far more sense to meet this target through a combined strategy of building new supply while also regularizing and upgrading existing informal settlements to ensure they meet housing adequacy standards as outlined in international human rights law.

Implementation Measures:

- a) States should adopt a rights-based approach to upgrading of informal settlements in accordance with the core principles outlined by the Special Rapporteur in her thematic report on this subject.¹⁰⁶
- b) All upgrading programmes must comply with the right to adequate housing, aiming to ensure that everyone, without discrimination, can live, in security, peace and dignity, in housing with secure tenure, that is affordable, habitable, culturally adequate, in a decent location, accessible, and where services are available.
- c) Upgrading programmes should provide continued access of residents to their livelihoods, and support economic development of the community.

¹⁰² See further A/73/310/Rev.1

¹⁰³ A/73/310/Rev.1, para. 12.

¹⁰⁴ See also the New Urban Agenda, HABITAT III.

¹⁰⁵ CESCR, general comment no. 3, para. 10

¹⁰⁶ A/73/310/Rev.1,

Commented [A25]: Hurricanes, cyclones, landslides, etc.

Deleted: to floods and other

Deleted: fearful of

Commented [A26]: Precarious is a good term if you don't want to use slums. We notice that the majority of people do not differentiate between inadequate, informal, and slum; which for us are strictly three categories. I see what you have done with inadequate informal; but perhaps precarious serves the purpose. Cheers.

Deleted: in the most adverse circumstances.

Deleted: and

Deleted: at some distance from their original homes, on the outskirts of cities,

Deleted: adequate

- d) Upgrading programmes should be community-led, inclusive, and enabling, providing for rights-based participation and accountability in their design and implementation.¹⁰⁷ They should integrate residents' skills and labour whenever possible.
- e) All upgrading plans should be reviewed and overseen by an independent authority or "upgrading ombudsperson" to ensure compliance with the right to housing, to receive complaints, hold hearings and information sessions within the community and liaise with governments, planners, contractors, financial institutions and others to ensure compliance with human rights.
- f) Governments should be held accountable, through human rights institutions and courts to their obligation to facilitate and support transforming informally-built housing into formally recognized housing that meets basic security, health and adequacy standards within the shortest possible time, by all appropriate means, using the maximum of available resources. Goals and timelines should be established commensurate with the commitment to upgrade all informal settlements by 2030, with meaningful accountability mechanisms in place to ensure that timelines are met.
- g) States should recognize the right of residents to remain *in situ* whenever possible and when desired by residents. Relocation should only be required, after all other options have been explored, and through meaningful engagement with residents.¹⁰⁸
- h) Any relocation must comply with the Basic Principles and Guidelines on Development-Based Evictions and Displacement and with General Comments No. 4 and 7 of the Committee on Economic, Social and Cultural Rights. This means that, *inter alia*, affected persons and their advocates must have opportunities to review the full details of all proposed alternatives and all the measures taken and foreseen to minimize the adverse effects of evictions.¹⁰⁹ They must be able to challenge any decision, to present alternative proposals and to articulate their demands and development priorities.¹¹⁰

Guideline No. 13

Prohibit forced evictions and prevent any evictions

55. Forced evictions are defined as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of and access to appropriate forms of legal or other protection."¹¹¹ They have long been recognized as a gross violation of human rights which must be prohibited, and subject to prosecution of those responsible and reparation for victims.¹¹²

56. The damage to lives and families caused by forced evictions world-wide is staggering. Being forced from one's home, often to see it demolished, has been recognized as a form of cruel and inhuman treatment. Forced evictions often involve violence including gender-based violence, and are

¹⁰⁷ A/73/310/Rev.1 para. 72ff; see also M.D.B. v. Spain E/C.12/61/D/5/2015, para 15.1

¹⁰⁸ Basic Principles and Guidelines on Development-Based Evictions and Displacement, para 38.

¹⁰⁹ Ibid, para 41.

¹¹⁰ Ibid. para 37.

¹¹¹ CESCR, General Comment No. 7, para. 3

¹¹² See, for example, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

sometimes linked to ethnic cleansing. Eviction of any kind, however, including when carried out in accordance with legal protections, have severe adverse repercussions for those affected, particularly for children.

57. Resorting to eviction procedures to remove people from their homes is usually indicative of the failure of States and businesses to meaningfully engage with communities and affected individuals in full compliance with the Basic Principles and Guidelines on Development-based Evictions and Displacement. Engaging with communities should result in the development of plans that respect the rights of residents, and provide for relocation to suitable alternative housing nearby where necessary. This can usually be implemented cooperatively, without the use of force.¹¹³

58. The growing number of evictions linked to defaults on mortgage or rent – even when they are carried out in accordance with domestic law – are often noncompliant with international human rights law. Evictions of this nature should only be ordered as a last resort, if no alternatives exist, if they will not result in homelessness and if reasonable measures have been adopted to provide for alternative housing.¹¹⁴ When, however, landlords and creditors have alternative means to recover debt, or where default has been linked to systemic issues of affordability that are the responsibility of States to address there is no attempt to abide by these international human rights obligations to avoid evictions.¹¹⁵ The practice of depriving people of their homes as a result of outstanding mortgage or rental arrears should be subject to more rigorous human rights review for compliance with these standards than it has received to date by domestic courts and national and international human rights bodies.¹¹⁶

Implementation Measures:

- a) States should prohibit forced evictions including through national law, and take all necessary measures to ensure that authorities or private actors do not contravene this law. Prohibited forced evictions include any evictions that render people homeless.
- b) National law should specify that any displacement or relocation of indigenous communities without their free, prior and informed consent constitutes a forced eviction and is prohibited.¹¹⁷
- c) Protection from forced evictions and guarantees of legal protections apply equally to persons living outside (e.g. on pavements) because they have no housing, and to those who are living informally on land or in housing for which they do not have title or formal authorization to occupy. States should clarify in national law that lack of security of tenure or land title should in itself never be sufficient to justify evictions.¹¹⁸
- d) Evictions must be governed by legislation that is compatible with the right to housing under international law, including the principle of human dignity and the general principles of reasonableness and proportionality. National law governing evictions should be compliant with General Comment No. 7 of the Committee on Economic, Social and Cultural Rights, the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement

¹¹³ A/HRC/40/61, para. 38.

¹¹⁴ CESCR, General Comment No. 7, para 16.

¹¹⁵ See, for example, A/HRC/34/51, para. 58.

¹¹⁶ A/HRC/34/51, para. 61.

¹¹⁷ See UNDRIP, art. 10.

¹¹⁸ A/73/310/Rev.1, para. 36.

(A/HRC/4/18) and the Guiding principles on security of tenure for the urban poor (A/HRC/25/54).

- e) Evictions – including in instances of mortgage foreclosure or non-payment of rent due to structural unaffordability – should only occur in the most exceptional circumstances and after the State has explored all alternatives to secure housing (or productive land) for those affected, particularly in cases involving families, older persons, children and/or other persons in vulnerable situations.¹¹⁹ Evictions should never be carried out in a discriminatory or inhumane manner, or render someone homeless or vulnerable to other human rights violations.
- f) To prevent evictions States should implement early intervention and support programmes for households struggling to pay rent or make mortgage payments. Information on eviction applications should be made available to organizations mandated to provide advice or support for eviction prevention.
- g) Courts should explore all alternatives to eviction before authorizing them, and may require Governments to provide financial assistance and to adopt other measures to allow people to remain in their homes. Access to justice should be ensured from the earliest stages of any relocation or development plan so that courts are able to ensure meaningful engagement with residents and require that reasonable measures be adopted to prevent evictions.¹²⁰
- h) Preventive measures should be adopted to avoid and/or eliminate the underlying causes of evictions and displacement, including speculation in land and real estate, inadequate income and rental assistance, and planning and zoning restrictions.¹²¹

Guideline No. 14

Review all housing and related policies to ensure their environmental sustainability and develop and implement strategies to address the effects of the climate crisis on the right to housing

59. Natural disasters and the climate crisis have enormous impacts on the enjoyment of the right to housing, with exponential increases of these effects anticipated in decades to come. Those living in homelessness or precariously housed are usually the most adversely affected, lacking access to resilient or secure housing and often living in areas that are vulnerable to flooding, storm surges, mudslides, earthquakes or other natural disasters. Moreover, disaster risk management measures undertaken by States often fail to take into consideration their effects on vulnerable communities that may be displaced.

60. The manner in which the right to housing is to be realized also has implications for climate change. The building and construction sector together account for 39% of global CO₂ emissions, most of which is concentrated in the middle and high income countries, and significant amounts linked to the construction of housing for the more affluent.¹²² It is in low income countries, however, that the greatest amount of construction will be required if informal settlements are to be upgraded by 2030.

61. The New Urban Agenda and the Sustainable Development Goals affirm the need to develop resilient and sustainable communities. States must work in consultation with communities to

¹¹⁹ CESCR, Communication No. 5/2015, para. 21 (c).

¹²⁰ See further A/HRC/40/61.

¹²¹ See, for example, UN Guiding Principles on Extreme Poverty and Human Rights, para. 80 (b).

¹²² UNEP, 2018. https://www.worldgbc.org/sites/default/files/UNEP%20188_GABC_en%20%28web%29.pdf

promote a return to local building methods and environmentally sound or renewable building materials, if the Sustainability Agenda is to be compliant with the Paris Agreement.

Implementation Measures:

- a) States should recognize that the climate crisis has significant implications for the effective implementation of the right to adequate housing. The right to adequate housing should be integrated as a key component in planning, preparation and implementation of pre and post-disaster interventions.¹²³
- b) States should ensure that adaptation measures intended to protect people from the effects of the climate crisis do not adversely impact those who are living in precarious housing or result in violations of the right to housing.
- c) Measures should be adopted to prevent conditions that might lead to climate displacement and ensure that people and communities can continue to live in their houses and lands for as long as possible in a manner consistent with their human rights.¹²⁴
- d) Climate change adaptation efforts should give priority to the needs of the most vulnerable and start by collaborating with them to identify the measures needed for their protection. Such measures may include installing protective infrastructure, supporting buildings of better quality, providing technical support and appropriate finance systems, and assisting those who live in dangerous sites to move to safer sites.¹²⁵
- e) States should conduct thorough analysis of anticipated climate displacement, determine likely timeframes, identify communities threatened by climate change, and possible relocation sites for climate displaced persons.
- f) Rights to remain in communities where possible and rights to relocate should be clearly defined in law and policy on climate displacement. Relocation should be implemented in consultation and full cooperation with the people concerned.
- g) In case of temporarily displacements due to climate change-related disasters, such as hurricanes, storms, fires, droughts and floods, relocation should last only as long as absolutely necessary and all displaced persons should have the right to return to their homes without discrimination.¹²⁶

Guideline No. 15

Ensure effective monitoring and accountability mechanisms

62. Monitoring the implementation of the right to housing is a central component of the obligation to progressively realize the right.¹²⁷ In the Special Rapporteur's experience, States tend to misunderstand the obligation to monitor progress as being merely a matter of collecting and disseminating data about housing programs, expenditures and aggregate demographic data, devoid of reference to the human rights standards to which States are accountable.

¹²³ See, for example, A/HRC/16/42.

¹²⁴ See for example, Peninsula Principles on Climate Displacement within States.

¹²⁵ See, for example, A/64/255 para. 74.

¹²⁶ A/64/255, para. 55.

¹²⁷ CESCR, general comments no. 3, para. 11 and no. 4, para. 13. See also ICESCR, art. 16.

63. Monitoring is often conducted by governments themselves, rather than by independent institutions with the capacity to assess human rights compliance and to hold governments accountable. Evidence considered is often restricted to aggregate statistical information, without qualitative evidence based on experiences of rights-holders. In many countries disaggregated data are not collected due to either the lack of technical capacity or absence of legislation allowing it.

64. Monitoring bodies have not provided means for rights-holders to identify areas in need of attention so the assessment of progress and compliance is often remote from the actual experiences of rights holders. Statistical reports are often simply submitted without any procedure for follow-up to ensure that problem areas are addressed. As noted by the CESCR, human rights institutions, (or similar bodies mandated to focus specifically on the right to housing) can play an important role in identifying appropriate goals and benchmarks, providing research, monitoring compliance and examining complaints.¹²⁸ If States are to take seriously their commitments under target 11.1 of the Sustainable Development Goals, they must institute rigorous independent monitoring of progress, based on realistic goals and timelines, with means to hold governments and other actors accountable.

65. Effective monitoring should assess progress in relation to capacity and available resources; consider whether the needs and circumstances of those most in need have been met; whether the rights of women, migrants, persons with disabilities and other marginalized groups have been addressed; and whether governments have made reasonable efforts to meet established targets and timelines in accordance with housing strategies and sustainable development goal commitments. Monitoring must be designed to uncover systemic issues requiring redress including real estate markets and broader trends impacting the right to housing, and must extend to all actors engaged in the housing system, including private business enterprises.¹²⁹

Implementation Measures:

- a) Effective monitoring and accountability should be incorporated as a component of all programs, ensuring access to hearings or an ability of affected groups to bring problems to light and propose solutions. Regular reporting should be accompanied by requirements that authorities provide a response with proposed follow-up action within a reasonable period of time.
- b) Appropriate quantitative and qualitative human rights indicators should be developed,¹³⁰ covering all aspects of the right to housing, including security of tenure, availability of services, affordability, habitability, accessibility, location and cultural adequacy.¹³¹
- c) An independent body such as the national human rights institution or ombudspersons, with expertise in human rights and the right to housing should be mandated to monitor progress and compliance with the progressive realization of the right to housing. Using political venues such as parliamentary or congressional hearings that include stakeholder witnesses, States should provide periodic public reports on their progress on the implementation of the right to housing.
- d) Monitoring should include analysis of effectiveness of policies and programmes, adequacy of budgetary allocations and assess compliance with the obligation to apply the “maximum” of

¹²⁸ CESCR, general comment no. 10.

¹²⁹ See UN Guiding principles on business and human rights, principle no. 5.

¹³⁰ See for guidance, OHCHR, Human Rights Indicators: A Guide to Measurement, 2012. See also OHCHR, Human Rights-Based Approach to Data, 2018.

¹³¹ See CESCR general comment no. 4 for a detailed description.

“available resources” and “all appropriate means” to address inadequate housing conditions and homelessness.

- e) Participation of rights-holders in monitoring should be ensured and special measures should be adopted with a view to enabling marginalized groups to engage effectively in the monitoring process.
- f) The independent monitoring body should be conferred the capacity to hear complaints from concerned people or groups, undertake monitoring visits, surveys and convene public hearings to gather information relevant to the discharge of its functions.
- g) States should ensure that monitoring bodies are provided with sufficient human and financial resources.

Guideline No. 16

Ensure access to justice for all aspects of the right to housing

66. The provision of legal remedies for the violation of the right to housing is a core component of States’ obligation to ensure the realization of this right.¹³² As spelt out by the CESCR, “[m]any component elements of the right to adequate housing are closely bound up with the provision of domestic legal remedies to ensure the effective enjoyment of the right.”¹³³ The definition of forced eviction, for example, is directly linked to the denial of access to legal protections. Indeed, as noted in the Special Rapporteur’s report on access to justice for the right to housing (A/HRC/40/61), violations of the right to housing are as much failures in the administration of justice to ensure meaningful accountability and access to effective remedies as they are failures of housing programmes.¹³⁴ 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, than as venues where the right to housing can be claimed.¹³⁵

67. States have an immediate obligation to ensure access to justice for those whose right to housing has been violated.¹³⁶ In discharging their obligation, they should follow the 10 key principles spelled out in the Special Rapporteur’s report.¹³⁷

Implementation Measures:

- a) Access to justice should be ensured by all appropriate means, not only through courts, and address the needs of diverse groups.
- b) It should be ensured for all components and dimensions of the right to housing that are guaranteed under international human rights law, covering not just the right to a physical shelter, but to a safe and secure home in which to live in security, peace and dignity, with legal tenure security, affordable, habitable, culturally adequate, in a decent location, accessible, and where services are available.

¹³² See, for example, CESCR, general comment nos. 3, para. 5, and 4, para. 17.

¹³³ CESCR, Communication No. 2/2014, Views adopted by the Committee at its fifty-fifth session (1-19 June 2015), para. 11.1

¹³⁴ A/HRC/40/61.

¹³⁵ Ibid. para. 4

¹³⁶ CESCR, general comment nos. 3 and 9. See also CESCR Communication No. 2/2014, views adopted at its fifty-fifth session (1-19 June 2015), para. 11.3.

¹³⁷ For further guidance, see A/HRC/40/61.

- c) Remedies should address both individual and systemic violations of the right to housing.
- d) Individuals and groups, households and communities should have standing to advance claims and to participate throughout legal processes, including in the implementation of remedial measures, through hearings and effective engagement.
- e) All decision-making that affects the enjoyment or realization of the right to housing must be reviewable for compliance with the right to housing, based, where appropriate, on the reasonableness standard described above. (see guideline no. 3).
- f) Access to justice may not be denied on the basis that the right to housing or any of its component is not considered justiciable within the State's domestic legal order.¹³⁸
- g) Victims of violations should be ensured access to justice when public authorities directly violated the right to housing, when they failed to protect rights-holders against violations by others actors, and when the State failed to meet its obligation to fulfil, thus covering for example, both protection from forced evictions and arbitrary home demolitions and from States' failures to adequate fund programs to ensure housing in the community, with supports, for persons with disabilities.
- h) Mechanisms for hearings and adjudication of the right to housing outside of courts may provide supplementary, access to justice, but these must be timely, accessible procedurally fair, enable full participation, and ensure effective remedies that accord with the right to housing. Recourse to courts and judicial remedies should be available when needed.
- i) Governments and courts should interpret and apply domestic law in accordance with the State's obligations to respect, protect and fulfil the right to housing. Judges, tribunal members and administrative decision-makers should be trained in how the right to housing under international human rights law is applied in the interpretation or application of domestic law.
- j) National human rights institutions should promote access to justice for the right to housing. Besides monitoring progress of the realization of the right to housing (see guideline no. 15), they may also be enabled to identify and address areas of State non-compliance with the obligation to ensure access to justice and to take these issues before relevant courts or tribunals.
- k) Informal and customary forms of justice that are compliant with international human rights law should be promoted and strengthened with a view to facilitating access to justice.
- l) States should ensure access to justice for violations of the right to housing by private actors, including "by establishing parent company or group liability regimes, providing legal aid and other funding schemes to claimants, enabling human rights-related class actions and public interest litigation, facilitating access to relevant information and the collection of evidence abroad, including witness testimony, and allowing such evidence to be presented in judicial proceedings".¹³⁹

¹³⁸ This would be in contravention of article 27 of the Vienna Convention on the Law of Treaties, which stipulates "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty", see as well CESCR, general comment no. 9, para. 9-15.

¹³⁹ CESCR, general comment no. 24, para. 44.

Guideline No. 17**Undertake international cooperation to ensure the realization of the right to adequate housing**

68. The current human rights crisis in housing is of a global scale. Many actors involved in housing operate at a transnational level, with complex corporate structures that pose considerable obstacles to ensuring accountability (private equity firms, corporations, funds). International financial institutions and development banks often apply approaches that are detrimental to the implementation of the right to housing and do not adhere fully to human rights standards. as has been the case, for example, of the imposed deregulation or austerity measures, or mortgage financing that excludes those most in need.¹⁴⁰ The global nature of many of the challenges related to the realization of the right to housing thus requires urgent international action, through international cooperation and States' membership in international organizations. International co-operation should be recognized as a legal obligation that is necessary for States' domestic implementation the right to housing.

69. The Declaration on the Right to Development proclaims that all States should co-operate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms without discrimination. The realization of the right to housing for all is a key pillar of inclusive sustainable development agendas, including the SDGs.

Implementation Measures:

- a) States should recognize international co-operation for the realization of the right to adequate housing as a firm legal obligation in domestic law.
- b) States should undertake international cooperation and create an international environment conducive to the realization of the right to housing for all, including through the reform of international financial institutions and international policy coherence.¹⁴¹
- c) With regard to development cooperation and assistance, both recipients and providers States should ensure that a substantial proportion of financing is devoted to creating conditions leading to a higher number of persons being adequately housed.¹⁴²
- d) Public and non-governmental development organizations, humanitarian organizations and international organisations should adopt a rights-based approach to housing and adopt policies to prevent violations of the right to housing.
- e) The role of international financial institutions should be aligned with the promotion of the realization of the right to housing rather than the financialization of housing. Development banks and financial institutions should only fund and implement projects that are designed and undertaken in full compliance with international human rights law and establish safeguard policies covering all aspect of the right to adequate housing. Independent complaints mechanism should be available for any alleged violation of or incompatibility with the State's obligations with respect to the right to housing and should be accessible to all persons or communities affected by projects that are financed by them.

¹⁴⁰ A/HRC/37/53, para. 134 and A/73/310/Rev.1 paras.99ff.

¹⁴¹ UN Charter; ICESCR, arts 2(1) and 11; Declaration on the Right to Development; Guiding principles on business and human rights, principle no. 10; CESCR, general comment no. 24, para. 37.

¹⁴² CESCR, general comment no. 4, para. 19.

DRAFT

- f) States should improve international tax cooperation to prevent and combat tax evasion and tax avoidance strategies in order to preserve their ability to mobilize resources domestically to realize the right to adequate housing.¹⁴³
- g) States should cooperate to ensure that businesses respect human rights abroad.¹⁴⁴ States should take additional steps to prevent human rights violations abroad by corporations that are domiciled in their territory and/or jurisdiction and ensure access to justice for violations within domestic courts.¹⁴⁵

¹⁴³ See, for example, CESCR, general comment no. 24, para. 37.

¹⁴⁴ See, for example, Guiding Principles on Extreme Poverty and Human Rights.

¹⁴⁵ CESCR, general comment no. 24, para. 26.