



The Global Initiative

for Economic, Social and Cultural Rights

Summary of Meeting NGO Consultation with the Special Rapporteur on the Right to Adequate Housing, Ms Leilani Farha Thursday 2 October 2014, Geneva

This is a summary of the meeting with the Special Rapporteur on the right to adequate housing, Ms Leilani Farha, held on 2 October 2014 in Geneva. The list of participants of the meeting is provided at the end of the document.

Lucy McKernan of the Global Initiative for Economic, Social and Cultural Rights provided a brief welcome and introduction to the meeting and then participants discussed 4 topics:

Topic # 1 – Homelessness, criminalization of homelessness

Topic # 2 – Displaced persons

Topic # 3 – Non-State actors, international financial institutions

Topic #4 – Access to justice

Each topic was introduced by one participant followed by open discussion.

Topic # 1 – Homelessness, criminalization of homelessness

Janet Nelson of International Movement ATD Fourth World provided introductory comments to the discussion on this topic.

In looking at homelessness, participants emphasized the need to include people who are not necessarily living on the street, such as travelers in France and other parts of Europe who face discrimination due to the fact that they live in caravans, even if they are now sedentary, because caravans are not considered legal domiciles. Many travelers therefore have no access to water, electricity, social protection, legal recourse, etc. The failure of authorities to monitor this problem because they do not collect statistics on the traveler population was also discussed. The same problem is experienced by those living in informal settlements across the world: the authorities do not want to recognize the settlements so they do not collect data on the situation of the people living there. In this way they are invisible and ignored in policy-making and programme development. For instance it is of concern that if implementation of the SDGs fails to reach people in informal settlements, this will not be reflected in the official statistics on the progress being made on the SDGs.

This invisibility also has a negative impact on available assistance. For example in relation to conditional cash transfers and other State supports: where homeless persons do not have a permanent address they are not legally recognized and then are not able to access State supports.

There are a number of good practices in this area such as cities where the local authorities allow homeless persons to use the city hall or an NGO address as their address for official documentation.

There was discussion also of the work of US NGOs who have been bringing homelessness and criminalization of homelessness in the US to the attention of a number of UN treaty bodies. They are demonstrating that policies that effectively criminalise homelessness (such as public space offences) amount to 'cruel, inhuman and degrading treatment' under the International Covenant on Civil and Political Rights. This is because homeless people are being penalized for undertaking essential human behavior (sitting, eating, drinking, sleeping, and going to the bathroom) in public places in circumstances where they have no other option. The UN Human Rights Committee recently recognized this in its review of the US and the same argument will be put to the UN Committee Against Torture in November in relation to the US and Australia. Many Special Rapporteurs have made public statements about this topic and addressed it in their reports, although not necessarily framing it as an issue of 'cruel and inhuman and degrading treatment'.

Human Rights Watch is soon to publish a report on drug users and housing policy in Athens which will address similar issues. The report will detail for instance how, despite the fact that there are very high vacancy rates in social housing in Athens, the State social housing policy specifically precludes access to drug users, rendering these people homeless.

There is also a report called 'In the Public Eye: Addressing the negative impact of laws regulating public space on people experiencing homelessness' by Homeless Law (Australia) (by Lucy Adams) which looks at criminalization policies in Australia, the US, Canada and Europe.¹

The participants also indicated their interest in the topic of legal recourse and mechanisms to ensure implementation of legislation. Reference was made to the failure of the French Government to implement a European Court ruling handed down a year ago, in relation to the eviction of travelers.

OHCHR is working on a number of projects related to the right to adequate housing. For example: they have just published a booklet on homelessness and the right to adequate housing; they are working on better definitions of types of homelessness and indicators regarding homelessness and the right to adequate housing; and a new project with UN Habitat commencing next year.

There was discussion also of housing status itself as a ground of discrimination. Participants mentioned the plight of persons living in informal settlements and ghettos who are excluded from public and private services, including housing, on the basis that they live in certain areas or housing projects.

It was noted that homelessness might be a good lens for considering a number of other issues that cut across the mandate and in some cases across ESC rights. For instance it is a good vehicle for focusing on the obligation to fulfil which has been more neglected than the other elements of the right to adequate housing. States often treat progressive realization and the obligation to fulfil as a mere policy aspiration rather than an immediate tangible obligation. Reference was made to the 'comprehensive violations' approach detailed in the recent report of the Special Rapporteur on water and sanitation. A focus on homelessness also dovetails into a discussion of human rights-based housing strategies (identified in the Special Rapporteur's first report) and the provision of guidance to States on prevention of homelessness and of violations of the obligation to fulfil.

¹ See <http://www.justiceconnect.org.au/law-enforcement-not-answer-public-space-issues-and-homelessness-%E2%80%93-international-experience-shows>

Topic # 2 – Displaced persons (refugees and internally displaced persons)

Barbara McCallin of the Internal Displacement Monitoring Centre provided an introduction to the topic by describing the unique experiences of displaced persons (DPs), whether internally displaced or refugees, in realizing their right to adequate housing. She also described IDMC's 2 research projects on tenure security in the urban context:

- Housing response to urban informal settlers displaced by disasters: showing how informal settlers are the most exposed to disasters and more vulnerable to their effects and how they tend to be excluded from national or international reconstruction assistance.
- Compiling and analyzing policies and practices in relation to housing for urban IDPs in support of durable solutions: based on analysis of 'good' practices it will try to identify key elements of housing responses with long term solutions for IDPs.

The meeting considered the multiple causes of displacement: conflict, disasters and development induced. There are no clear borders between these various causes and they often interact or affect the displaced successively. It was noted that often support and solutions for displaced persons are provided in silos depending on the cause of the displacement (ie. development project, natural disaster, conflict). However, for displaced persons, who have often experienced a series of displacements and relocations due to a range of reasons, these differences are irrelevant and lead to unequal treatment. Authorities should look at the displaced population as a whole.

Adequate housing is a key concern for displaced persons: it is the first thing they lose when they are displaced, and it is recognized as a key element conditioning the achievement of durable solutions. In fact some governments actually make sure IDPs do not get adequate housing in their place of displacement so that they will have no choice but to return faster to their place of origin.

A large proportion of displaced persons live in informal settlements in urban areas and have no security of tenure. They are therefore highly vulnerable to forced evictions, discrimination on a range of grounds (including their tenure status) and to further displacement. In the case of destruction of homes by conflict or disasters, DPs without formal occupation rights or title are often excluded from reconstruction assistance. The previous Special Rapporteur's work on security of tenure for the urban poor, also addressed the security of tenure issues of this group.

Lack of official documentation or identification is a common problem for displaced persons and it seriously impacts their ability to access compensation or claim entitlements, to secure housing or to resolve issues with their housing. This also leads to displaced persons being 'invisible' to the authorities and ignored in national and local housing policy-making.

The Special Rapporteur's proposed work on sub-national governments² will also be very important for displaced persons as sub-national governments are frequently responsible for providing for the immediate housing needs of displaced persons in their territory. Thus local level authorities often have a deeper understanding of the realities and possible solutions and may be better placed to organize consultations with their population. The importance of involving municipal level in relation to housing, and displacement has been highlighted by the SR on IDPs in his latest report on urban displacement (August 2014). The specific vulnerability and difficulties of displaced persons should be

² Which is the theme for her first report to the Human Rights Council in March 2014.

recognized and integrated into national or sub-national housing policies. However, this will be difficult without better documentation of the displaced persons population and their needs.

It was noted that engagement with the Special Rapporteur on the right to adequate housing in the past has been very useful for the humanitarian sector in improving the awareness of many humanitarian actors of the need to integrate human rights into their programme activities. It resulted in the 'Shelter cluster' working specifically on 'regulatory barriers to shelter' and trying to better take into consideration tenure security. It can also open up communication channels to national governments and development actors. Participants encouraged the Special Rapporteur to continue this positive engagement. It would be interesting to explore further donor obligations with respect to the right to adequate housing for displaced persons.

Participants also highlighted the plight of stateless persons who are often ignored in discussions about displaced persons and who's situation States find difficult to deal with. UNHCR are doing work in relation to this group of people.

A number of participants mentioned the Security of Tenure Guidelines, the FAO Guidelines on Land Tenure and the Basic Principles and Guidelines on Development-Based Evictions and Displacement and encouraged the Special Rapporteur and others through their work to promote these tools to States. Participants stressed the importance of ensuring the work of previous mandate holders is continued and promoted and that these practical tools are reinforced as very tangible ways for States to implement their obligations with respect to the right to adequate housing. OHCHR have produced a booklet on Forced Evictions which covers all different types of evictions and includes the situation of displaced persons. This booklet could also be a useful tool for States/policy-makers.

Participants were encouraged to bring specific cases to the attention of the Special Rapporteur, via Communications. For instance the case of 'No Build Zones' was discussed: where land is designated a 'no build zone' and people are moved from the land but the displacement is classified as a safety 'evacuation' rather than a forced eviction. This means that any legal or policy protections or rules regarding forced evictions do not apply to this situation and for instance, compensation is not payable. Such decisions are very frequent in post-disaster situations and it would be very useful to have further guidance on how to lead such processes in accordance with the right to adequate housing.

There was discussion about the different ways in which civil society can engage with the Special Rapporteur in relation to general topics of interest or specific cases (Allegation letters, Urgent appeals, Advocacy letters – all under the heading of 'Communications'). It was noted that the Special Rapporteurs often co-ordinate and work together and are open to suggestions about specific actions to take.

Topic # 3 – Non-State actors, International financial institutions (IFIs)

Ashfaq Khalfan of Amnesty International provided the introduction to this topic and described some of the work of Amnesty International on the World Bank's social and environmental safeguards review and a complaint lodged with the World Bank Inspection Panel with respect to forced evictions in Nigeria.

The meeting noted the important report of the previous Special Rapporteur, Raquel Rolnik, on her mission to the World Bank and of other Special Rapporteurs who have similarly written reports on the World Bank and human rights. The World Bank is very sensitive to criticism by Special

Procedures mandate holders which suggests that this work is effective. Participants discussed the current environment for international financial institutions which is much more competitive given the emergence of new lenders at the State level (eg: China) and the multilateral level (eg: new BRICs development bank). Therefore IFIs are of decreasing importance to borrower States and IFIs are reacting by reducing the rigor of their social and environmental standards to try to attract more borrowers. An example is the European Bank for Reconstruction and Development which reviewed its standards earlier this year with very disappointing results (other than on forced evictions).

Connectas³ is undertaking work on the BRICs development bank, monitoring its establishment and development of standards and advocating for the centrality of international human rights standards.

The World Bank is in the process of revising its social and environmental standards and has released its first draft which is very concerning as it has watered down protections in many areas including in relation to resettlement plans. It is pleasing to see that the draft standards do use a definition of 'forced evictions' that is in line with the CESCR General Comment definition, however there are other very damaging aspects such as the exclusion of 'public interest' cases. The draft includes no requirement to submit plans or budgets for resettlement prior to the financing of the project. Participants urged the Special Rapporteur to look at this issue urgently given the timing of the World Bank's review.

There are also serious concerns about the World Bank's manner of application of its own policy. It is finding ways to exclude projects or decisions from its own safeguards policies. See for instance Amnesty International's report on forced evictions at a World Bank project in Nigeria where the World Bank refused to register the complaints made by community members on the grounds that the complainants had received some compensation.⁴

The discussion turned to private actors more generally and it was agreed that this was a neglected dimension of the right to adequate housing. Although, there has been some work by NGOs on private actors in the context of the extractives industry and forced evictions and advocacy work focusing on private actors and land.

Amnesty International are hoping to focus their work more towards lack of access to services rather than purely forced evictions in the future. For instance they are involved in a Kenyan case involving failure to provide access to toilets by a private landlord. The Special Rapporteur on the right to water and sanitation is currently looking at this case.

The importance of emphasizing extra-territorial obligations and non-State actors was also discussed. This involves reinforcing States' obligations to regulate the extra-territorial conduct of their domiciled corporations and ensure that they are not violating the right to adequate housing overseas. This obligation extends to ensuring that effective remedies are available to victims outside the State's territory. It was noted that a number of treaty bodies have now made authoritative statements on ETOs and Special Rapporteurs have also affirmed them in their work.

The issue of privatization of public services, including public housing, was raised as an issue to watch. Work has been done on privatization in relation to the right to water and sanitation, the right to health and more recently the right to education. A number of NGOs are also engaged in advocacy in

³ Brazilian NGO - [Connectas.org.br](http://connectas.org.br)

⁴ See <http://www.amnesty.org/en/news/nigeria-destitute-victims-forced-eviction-must-be-adequately-compensated-2014-08-18>

the post-2015/SDGs space on concerns about 'corporate capture', ie. private sector influence of the SDGs and their implementation, to the exclusion of civil society and without reference to a human rights based approach.⁵

Participants also discussed the role of the financial sector in the financial crisis and austerity measures which severely impacted their right to housing. Human Rights Watch did a report on Spain highlighting the impact on women's right to adequate housing. Perhaps this could be the subject of a further communication to Special Procedures mandate holders?

Topic #4 – Access to Justice

Kirstie Farmer of the Norwegian Refugee Council (NRC) provided the introduction to this discussion. She started with a brief description of the NRC's work in this area which includes provision of information, counselling and legal assistance programs in 14 countries in conflict and post-conflict situations. The programs address refugees and internally displaced persons and they focus on housing, land and property (HLP) issues. The NRC sees access to justice (A2J) as integrally interlinked with HLP issues in that HLP is not achievable for many of the people NRC works with without A2J.

The most marginalized groups, which usually include refugees and IDPs, face the greatest challenges in accessing justice particularly where the gap between law and practice is most pronounced. The barriers to A2J are particularly high for women. NRC has a focused project on A2J for women. For example: lack of resources means they are unable to prepare and copy documents or travel to courts or pay court fees; they do not have their names on HLP documentation due to discriminatory laws or practices; caring responsibilities (for the elderly and children) prevent them from engaging in land sector reform interventions; and low levels of education and illiteracy means that women are often left out of key processes relating to the acquisition of land and housing rights. It also prevents them from understanding the judicial system, having knowledge of their rights and filing HLP claims in court.

NRC gave an example of research in Ecuador on Colombian refugee women and asylum seekers which highlighted the discrimination and xenophobia encountered when looking for rental accommodation. Refugee women highlighted instances of discrimination due to their nationality, Afro-Colombian ethnicity, refugee status, gender and because they have children. This resulted in higher rents, increased deposits and less formalisation of rental contracts. As a result, women reported having to live in poor quality, overcrowded housing where more than one family share a single rented room. Colombian women also reported problems with return of deposits when they left properties. They were afraid to seek redress for fear of coming into contact with the authorities, losing their refugee documentation or otherwise having to leave the country.

In conflict and post-conflict settings where there is a break-down in the rule of law and the judicial system is barely functioning, engagement with customary justice and dispute resolution systems and traditional and religious mechanisms becomes an important avenue for the resolution of HLP disputes or grievances. This is particularly important in relation to HLP because in many countries the local customary or religious authorities are responsible for land and property administration and regulate disputes over issues such as inheritance, marital property and access to land. Even though customary laws may contradict statutory provisions about equality, displaced women still find customary mechanisms to be the most viable option for resolution of their HLP disputes. Because

⁵ For example see <http://cesr.org/article.php?id=1576>

maintaining social relations is critical for displaced women's survival, they may be reluctant to seek dispute resolution through adversarial approaches, such as courts. It is therefore crucial for humanitarians to work with, and support women to shape and define customary and religious justice mechanisms. With the right kind of support, women can be successful in resolving their HLP claims through these forums. Educating customary authorities about statutory and religious laws that support women's claims can combat discrimination and have systemic impact.

Social norms and multiple discrimination are amongst the most significant barriers to A2J for women. There are a high proportion of women headed households in conflict and post-conflict situations and social norms frequently prevent such women from accessing their HLP rights. These social norms are perpetuated even by UN agencies and other humanitarian actors that for instance in Gaza and Lebanon provide shelter to the 'heads of households' which is assumed must be a man.

Lack of official documentation is also a significant problem. Women's marital status often determines their legal status and without legal status women are unable to own or claim rights to land or housing.

It is important also to look at the huge amount of funding provided by international donors for rule of law programs - very little (if any) of which is targeted to women as a group facing some of the greatest barriers to A2J. For instance Afghanistan is one of the top recipients of rule of law funding from the OECD and yet none of its programs are targeted towards women when we know that women in Afghanistan face significant barriers in accessing the justice system and in local customary systems.

Participants also emphasized the importance of education and awareness raising campaigns on the right to housing. It is important such campaigns are conducted not only at the international level but also at the national and local levels. Greater support should be offered to vulnerable groups to inform them of their rights and enable them to use mechanisms to protect their right to housing, so that when the State implements social policy in this area, these groups are able to react to these policies by asserting their rights rather than asking for charity or favours.

In relation to the budget allocation and sectoral budget support in relation to housing policy, some States do not clarify what allocation of resources there is in the field of housing rights nor how the allocation was made. It is important that there is greater transparency about budgets and that the notion of progressive realization is contained in the budget so that it becomes ingrained in State policy.

It was noted that barriers to access to justice are also a problem with respect to displacement caused by non-State actors, for instance in the extractives industry.

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List of Participants

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Barbara McCallin	International Displacement Monitoring Centre	
Kirstie Farmer	Norwegian Refugee Council	
Richard Pearshouse	Human Rights Watch	
Alexandra McDowell	Office of the United Nations High Commissioner for Refugees	
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Bahram Ghazi	Office of the High Commissioner for Human Rights	
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