



# GUIDING PRINCIPLES ON SECURITY OF TENURE FOR THE URBAN POOR

**FROM 2012 TO 2014**, the United Nations Special Rapporteur on the Right to Adequate Housing, Raquel Rolnik, developed a specific study on security of tenure. The study was informed by an extensive research and also by many contributions received through public consultations promoted during this time, resulting in two thematic reports.

In 2012, two consultations were conducted, one in Geneva, Switzerland, and another in Naples, Italy. Throughout the year of 2013, consultations on the issue were held in Quito, Ecuador, focusing on the Latin American experience; in São Paulo, with a focus on Brazilian experience; in Johannesburg, South Africa, focusing on the African experience. Moreover, in Geneva, two roundtables were held: one on security of tenure focusing on European experience and another with humanitarian organizations and donors. These consultations involved governments representatives, activists, academic researchers, social movements members, among others, who shared their experiences regarding security of tenure in different situations.

More than 30 States contributed to the project through the submission of responses to the questionnaire sent by the Rapporteur, providing valuable examples of policies, laws and practices. Also, different organizations submitted contributions through the Special Rapporteur's communication channels.

This publication is a reproduction of two UN documents. One is the final product of this process: a thematic Report (A/HRC/25/54) containing the guiding principles on the theme, followed by its commentaries, presented by the Special Rapporteur to the 25<sup>th</sup> Session of the UN Human Rights Council; and the other the Resolution (A/HRC/25/17) adopted by the Council in the end of its Session, which contains references to the guiding principles on security of tenure for the urban poor as laid out in the Report.



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## INTRODUCTION

The Human Rights Council, in its resolution 15/8, requested the Special Rapporteur to emphasize practical solutions for the implementation of the right to adequate housing. In her first report on this subject, the Special Rapporteur identified the global tenure insecurity crisis as a challenge deserving specific attention (A/HRC/22/46). In the present report, she offers some guiding principles to address urban tenure insecurity. These principles are informed by several responses from States to questionnaires, as well as thematic and regional consultations with various stakeholders, and comments and input from civil society organizations.<sup>1</sup> The Rapporteur wishes to express her appreciation for all contributions.

In the last decade, States' obligations to respect, protect and fulfil the right to adequate housing have been elucidated, including through legislation and case law at national and regional level. Internationally, in 2007, the previous Special Rapporteur in his report (A/HRC/4/18) presented the basic principles and guidelines on development-based evictions and displacement ("Basic Principles"). In 2012, member States of the Committee on World Food Security adopted by consensus the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. In the humanitarian context, in 2005 the Principles on Housing and Property Restitution for Refugees and Displaced Persons were developed (E/CN.4/Sub.2/2005/17). The present report reflects and builds upon these instruments, focusing in particular on urban tenure security, to fill an important gap in human rights guidance.

Consistent with international human rights law, these principles give guidance on existing human rights standards as they pertain to housing and land tenure. Nothing in these principles should be read as limiting or undermining the existing human rights obligations of States or other actors. Accordingly, the Special Rapporteur wishes to suggest that the Council adopts these guiding principles on security of tenure for the urban poor.

Security of tenure is understood as a set of relationships with respect to housing and land, established through statutory or customary law or informal or hybrid arrangements, that enables one to live in one's home in security, peace

<sup>1</sup> All responses from States to questionnaires and more information on the consultations are available from [www.ohchr.org/EN/Issues/Housing/Pages/StudyOnSecurityOfTenure.aspx](http://www.ohchr.org/EN/Issues/Housing/Pages/StudyOnSecurityOfTenure.aspx).

and dignity. It is an integral part of the right to adequate housing and a necessary ingredient for the enjoyment of many other civil, cultural, economic, political and social rights. All persons should possess a degree of security of tenure that guarantees legal protection against forced eviction, harassment and other threats.

The plight of the urban poor presents one of the most pressing challenges to security of tenure, especially in an increasingly urbanized world. These principles aim to provide guidance to States and other actors to address this challenge in order to ensure adequate housing for poor and vulnerable people in urban and peri-urban areas.

States have an immediate obligation to ensure that all persons possess a degree of security of tenure that guarantees legal protection against forced eviction, harassment and other threats.<sup>2</sup> They also have an obligation to take progressive measures to strengthen security of tenure for all persons using land or housing for their basic housing needs, and who currently lack such security. The entitlement to secure tenure in situ is, however, not absolute and can be rebutted in exceptional circumstances that justify eviction, consistent with international law obligations concerning, inter alia, due process, reasonableness and proportionality and the exploration of all feasible alternatives.<sup>3</sup> When such circumstances exist, States must guarantee safeguards to ensure evictions and resettlement fully respect the human rights of those affected, including through access to alternative housing.<sup>4</sup>

Underlying these guiding principles is a presumption that individuals and communities occupying land or property to fulfil their right to adequate housing, and who have no other adequate option, have legitimate tenure rights that should be secured and protected. The concept of legitimate tenure rights extends beyond mainstream notions of private ownership and includes multiple tenure forms deriving from a variety of tenure systems.

Contrary to dominant discourse on tenure, freehold titles are not the sole instrument of tenure security. Often, policies that promote individual freehold simultaneously reduce support to other tenure arrangements. Such policies risk excluding and undermining the tenure status of large segments of urban and peri-urban populations, particularly the poorest, leading to retrogression in the enjoyment of the right to adequate housing.<sup>5</sup> Conversely, policies favouring diverse tenure forms can improve secure access to housing for different population groups.

<sup>2</sup> Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 8 (a).

<sup>3</sup> Basic Principles, para. 21.

<sup>4</sup> Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on the right to adequate housing, and the Basic Principles.

<sup>5</sup> *Ibid.*, general comment No. 3 (1991) on the nature of States parties' obligations, para. 9.

# GUIDING PRINCIPLES





# 1 STRENGTHENING DIVERSE TENURE FORMS

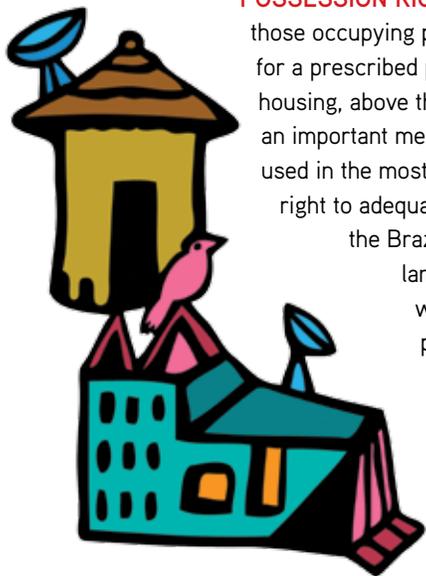
States should promote, protect and strengthen a variety of tenure forms, including those deriving from statutory, customary, religious and hybrid tenure systems. All relevant laws, policies and programmes should be developed on the basis of human rights impact assessments, which identify and prioritize the tenure arrangements of the most vulnerable and marginalized. The following types of tenure, among others, should be promoted, strengthened and protected, as appropriate in the given context:

- Possession rights;
- Use rights;
- Rental;
- Freehold; and
- Collective arrangements.



**STATES SHOULD TAKE IMMEDIATE AND PROGRESSIVE** measures to confer legal security of tenure on individuals and communities currently lacking protection.<sup>6</sup> States should undertake human rights impact assessments of proposed measures, in the housing, land and financial sectors. These assessments should examine potential effects on all existing tenure forms and on groups vulnerable to eviction, including market-induced displacements. If there is risk of exacerbating tenure insecurity, alternatives should be considered or, as a last resort, mitigation measures should be developed. Based on these assessments, States should take legislative and programmatic measures to secure diverse tenure forms, prioritizing arrangements for those facing barriers to the full realization of their housing rights.

In many places, rapid urbanization has led to the development of large peri-urban areas, blurring divisions between urban and rural systems. The following types of tenure forms, among others, whether deriving from customary, religious,<sup>7</sup> statutory or hybrid<sup>8</sup> tenure systems, should be promoted, strengthened and protected, as appropriate in the given urban and peri-urban context.



**POSSESSION RIGHTS.** The legal recognition of the rights of those occupying public, private or community land and housing for a prescribed period, through adverse possession of land and housing, above the rights of absentee owners or the State, is an important measure to ensure that land and housing is being used in the most socially productive manner and to fulfil the right to adequate housing for all. For example, article 183 of the Brazilian Constitution recognizes *usucapio* of urban land used for a home after five years of possession without interruption or opposition, provided that the possessor does not own any other property.

Administrative and judicial procedures for the recognition of adverse possession should be simple, prompt and affordable. Both individual and collective adverse possession should be recognized. Where owners have been forcibly displaced or forced to flee their

<sup>6</sup> Ibid., general comment No. 4, para. 8 (a).

<sup>7</sup> In many societies, customary and religious tenure systems enjoy a high degree of social legitimacy. Since a diverse range of tenure forms exists under these systems governing land allocation, use and management and conferring tenure security, some of which are akin to the forms of tenure described in this commentary, they are not discussed separately, notwithstanding their special character.

<sup>8</sup> Hybrid tenure systems refer to a combination of two or more tenure systems, including those often referred to as "informal" or "extralegal" tenure.

homes, caution should be exercised to ensure that one's right of adverse possession does not obstruct others' right to return.<sup>9</sup>



**USE RIGHTS.** The right of people to use public or private property for their housing needs under certain conditions should be recognized and protected in law and policy. For example, in Trinidad and Tobago, Certificates of Comfort give the holders a right not to be removed from the plot unless resettlement is deemed necessary and an alternative plot is identified and made available.<sup>10</sup> In Mozambique, a right to use and improve State land can be granted to individuals or groups, which allows persons to mortgage or sell their buildings and other improvements on that land.<sup>11</sup>

**RENTAL.** Renting a plot, dwelling or room from a private or public owner provides access to housing for many urban poor households.<sup>12</sup> Rental involves the right to use housing for a period of time at a given price, without transfer of ownership, on the basis of a written or verbal contract.

In addition to public and non-market rental options, States should promote private rental for the urban poor, including through policies to expand rental-housing stock. Such policies include tax incentives to owners, guarantees or insurance schemes against non-payment of rent, and the provision of grants or low-interest loans to landlords to improve dilapidated housing units on the condition that they rent to low-income tenants. A Government incentive programme in New Jersey, United States of America, for example, provides grants to landlords to provide safe, suitable and affordable housing for low and moderate-income residents.<sup>13</sup> In Slovakia, subsidies are provided for the construction of rental apartments for low-income groups, including for socially excluded Roma communities.<sup>14</sup> Housing allowances for low-income tenants should also be considered.<sup>15</sup>

States should regulate the rental sector, including by placing flexible restraints on rent increases and limits on eviction consistent with international human rights

<sup>9</sup> See Principles on Housing and Property Restitution for Refugees and Displaced Persons.

<sup>10</sup> State Land (Regularisation of Tenure) Act 25 of 1998.

<sup>11</sup> Mozambique Land Law, 1997.

<sup>12</sup> See Special Rapporteur's report to the General Assembly, A/68/289, paras. 23–26.

<sup>13</sup> The Landlord Incentives Programme, 2013.

<sup>14</sup> Act No. 443/2010 on subsidies for housing development and social housing (questionnaire response from Slovakia). Also, A/68/289 paras. 32–33.

<sup>15</sup> A/68/289, paras. 32–33.

obligations.<sup>16</sup> These measures should balance the rights of tenants and landlords. For example, in Germany,<sup>17</sup> where a majority of households rents, regulations place a cap on increases for sitting tenants providing a high degree of tenure security, while maintaining the profitability of private investments in rental.<sup>18</sup> States should also encourage the use of standardized human rights-compliant rental contracts, and make them freely available and free from notary approval.

**FREEHOLD OWNERSHIP.** Individual ownership confers full control over housing and land, subject to law and local regulations, as well as adverse possession rights and the State's expropriation powers. This quality makes it a desirable form of tenure for many households. Since ownership rights are generally expensive to acquire, housing finance is often necessary. Tenure security is jeopardized when owner-occupiers are unable to cope with loan repayments and default on their mortgages. Foreclosures by banks and other credit institutions pose a serious threat to the enjoyment of the right to adequate housing, with the poorest disproportionately affected. States should take all measures to protect security of tenure of owner-occupiers and prevent the loss of homes and homelessness as a result of foreclosures.<sup>19</sup>

**COLLECTIVE TENURE.** Several types of collective tenure arrangements exist in which ownership, rental or use rights over land and housing are shared under joint governance structures. Rights are allocated to individuals according to rules established by the group or local custom. Collective arrangements can reduce the costs of securing housing by creating a single legal entity. Collective organization also promotes affordability by leveraging group resources to maintain and repair housing infrastructure, and by enabling group loans and savings.<sup>20</sup> Collective tenure can also provide a high degree of security and safeguard against the threat of predatory purchasing by higher-income groups and speculators by vesting decision-making powers, including the right to sell, in the collective. Collective tenure forms include the following.

**HOUSING COOPERATIVES** are established by a group of persons who form a legal entity to develop and maintain a housing project for the collective benefit of members.<sup>21</sup> In countries like the Philippines, Sweden and Uruguay, government programmes help

communities to acquire, develop and manage land for cooperative housing. Since 1968, Uruguay has had legislative regulation of cooperatives, and approximately 600 cooperatives currently house some 20,000 families.<sup>22</sup> Cooperatives' success as a provider of low-income housing has been largely due to the existence of the Federation of Mutual Aid Housing Cooperatives, which supports democratic participation, self-management and the joint effort of families in the construction of homes.<sup>23</sup> In Argentina, the Buenos Aires municipality has established a credit programme for housing cooperatives.<sup>24</sup>

**COMMUNITY LAND TRUSTS (CLTs)** are held by non-profit community-controlled organizations that acquire land for the purpose of providing affordable housing.<sup>25</sup> Lands are removed from the speculative market to preserve affordability and made available through long-term leases for housing, businesses, urban agriculture and community facilities. CLTs have increased in popularity since the 1980s, especially in the United States where over 260 have been established.<sup>26</sup> Community organizing, and land donations and financial support from municipal governments, are key to their success.

**HYBRID TENURE MODELS** combine cooperatives and CLTs. Multi-residential buildings are owned and managed by a housing cooperative and the underlying land is owned by the CLT, providing another layer of protection for affordability. The Cooper Square CLT, for example, in New York City holds the land to over 300 low-income housing units in multi-family buildings owned and managed by a mutual housing association.<sup>27</sup>

States should adopt measures to promote collective forms of tenure, including supportive legislative and institutional frameworks and suitable financing instruments.<sup>28</sup> States should consider supporting collective tenure strategies for low-income housing through the allocation of public funds and well-located urban land, property tax exemptions and other tax benefits.<sup>29</sup>



16 Committee on Economic, Social and Cultural Rights, general comment No. 4, paras. 8 (c), and 17; and No. 7, paras. 9 and 11.

17 A/68/289, para. 21. Questionnaire response from Germany.

18 Kath Hulse, et al., *Secure occupancy in rental housing: conceptual foundations and comparative perspectives*, (Melbourne, Australian Housing and Urban Research Institute, 2011), pp. 89, 122 and 213–215. See also A/68/289, paras. 34–38.

19 See Special Rapporteur's reports to the General Assembly A/67/286 and A/68/289.

20 A/68/289, paras. 43 et seq.

21 Ibid, paras. 48–55.

22 Law No. 13.728 of 1968, regulated by decree 633/69.

23 Questionnaire response from Uruguay.

24 Law No. 341 of Buenos Aires.

25 A/68/289, paras. 56–62.

26 CLTs have been established in Australia, Belgium, Canada and England. See: [www.clnetwork.org/About-CLTs/What-Are-Community-Land-Trusts](http://www.clnetwork.org/About-CLTs/What-Are-Community-Land-Trusts); D. Diacon, et al., *Redefining the Commons* (Coalville, Building and Social Housing Foundation, 2005), pp. 4–7.

27 Tom Angotti, *Community Land Trusts and Low-Income Multifamily Rental Housing: The Case of Cooper Square, New York City*, Working Paper (Lincoln Institute of Land Policy, 2007), pp. 3 and 5–7.

28 For example, the Housing (Scotland) Act 2001, paras. 83–86 on establishment of a tenant management cooperative.

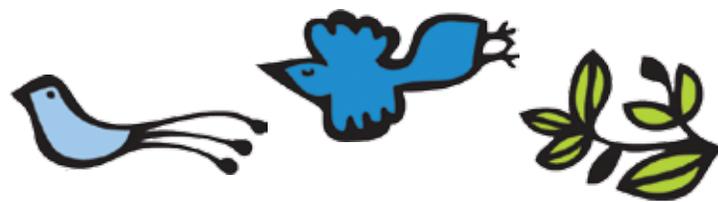
29 A/68/289, paras. 48–55.



# 2 IMPROVING SECURITY OF TENURE

In order to improve security of tenure, especially for vulnerable and marginalized persons and groups living in urban poor settlements, States, including relevant authorities, should take the following measures:

- Conduct citywide assessments of tenure arrangements;
- Identify insecure settlements and population groups, including the homeless;
- Develop citywide strategies for securing tenure and upgrading settlements on different categories of land and with different tenure arrangements;
- Review and reform urban plans and regulations in order to integrate settlements;
- Adopt and implement a human rights-compliant resettlement policy to be applied where in situ solutions are not possible;
- Facilitate participatory settlement mapping, enumerations and tenure registration;
- Establish fair and effective land dispute resolution mechanisms;
- Allocate sufficient funds to ministries, municipalities and local governments for the implementation of these measures; and
- Adopt or revise legislation to recognize and protect multiple tenure arrangements.



**LOCAL AUTHORITIES SHOULD CONDUCT A CITYWIDE ASSESSMENT** of existing tenure categories and the degree of security of tenure that each provides. The assessment should ascertain the underlying causes of tenure insecurity, such as inadequate urban planning, exclusionary zoning and building regulations; market forces; the political economy; or cultural and social factors, including discrimination. Authorities should identify settlements and groups throughout the urban and peri-urban area that lack tenure security and other aspects of the right to adequate housing, including homeless populations. They should also identify areas subject to gentrification and sudden raises in rents and housing prices that could produce future tenure insecurity.

The assessments should be made public in an accessible format, including to settlement residents for discussion and verification. They should inform the preparation of citywide strategies for securing tenure for the different situations, with strong participation of residents.

In the absence of affordable housing options the urban poor increasingly find self-help tenure solutions in urban and peri-urban areas. Programmes like the Thai Baan Mankong National Collective Housing Programme in Thailand, for example,<sup>30</sup> can recognize and upgrade settlements on a citywide scale. Strategies should address the situation of settlements on both public and private land, with a presumption in favour of in situ tenure solutions, unless residents prefer another option.

States are obliged to make use of the maximum available resources in order to realize human rights. Public land is an essential resource available to the State to fulfil the right to adequate housing. As such, unless exceptional circumstances exist, the tenure arrangements of households and communities residing on State land, with no other adequate housing option, should be legally secured in situ.<sup>31</sup>

States should also facilitate in situ tenure solutions, wherever possible, for those people residing on privately owned property where the inhabitants have no other adequate housing option. Options for securing tenure for inhabitants, either on an individual or collective basis, include:



- The recognition of adverse possession rights;
- Rental of the property by the owner at affordable rates and with legal tenancy protections;
- Sale of the property with State support where necessary;
- Sale of the property to the State, or expropriation of the property as a last resort, for the purposes of granting use, rental or other secure tenure rights to the inhabitants;
- Land sharing that allocates sufficient land to the owner and to the inhabitants;
- Expropriation of the property with payment of compensation and subsequent granting of use, rental or other secure tenure rights to the inhabitants. This option should be considered only as a last resort when other measures have been unsuccessful, given the high fiscal cost to the State.

Municipal authorities should revise existing legislation and planning regulations based on the tenure assessment. Urban plans should integrate settlements into city systems, facilities and infrastructures. The plan may, for example, designate low-income settlements as "special zones" with regulations allowing for incremental upgrading. For example, the zoning laws of some Brazilian cities establish social interest special zones, which contain special regulations reflecting the reality of settlement configurations. This allows settlements to be formally recognized as part of the city through participatory mechanisms.<sup>32</sup>

Urban plans should incorporate citywide strategies for any necessary resettlement. They should identify available, suitable and safe locations for resettlement, ensuring

<sup>30</sup> Questionnaire response from Thailand.

<sup>31</sup> See Centre on Housing Rights Evictions, *Human Rights and Slum Upgrading* (2005). Available from [http://sheltercentre.org/sites/default/files/COHRE\\_HumanRightsAndSlumUpgrading.pdf](http://sheltercentre.org/sites/default/files/COHRE_HumanRightsAndSlumUpgrading.pdf).

<sup>32</sup> Rolnik et al., *Zonas Especiales de Interés Social en ciudades brasileñas*, paper presented at the Foro Latinoamericano sobre Instrumentos Notables de Intervención Urbana, Quito, Ecuador, 2013.

access to livelihood opportunities, services and facilities. Resettlement is only permissible under international human rights law where it is assessed, in consultation with the community, and subject to administrative and judicial review, that in situ upgrading is not viable due to exceptional circumstances and the absence of feasible alternatives to eviction.<sup>33</sup> Authorities should not resettle any household until it has adopted a resettlement policy that is fully consistent with their international human rights law obligations.

States should work with settlement communities to recognize and secure their tenure arrangements (both in situ or in preparation for resettlement). Relevant authorities should facilitate people-driven settlement mapping and enumerations to gather settlement and household data, using both oral and written evidence.<sup>34</sup> States should encourage and enable community organization and mobilization throughout this process, and remove any impediments to freedom of assembly and association.<sup>35</sup> Any community-level negotiation with the State should only occur through legitimate representatives of the community. All relevant actors should ensure that marginalized groups within the community meaningfully participate in the process. The participation of such groups, including tenants, whose rights and interests are often ignored, should be supported.

Registering tenure rights in a land information system is an important step towards tenure security. However, consideration must be given to the risk of sudden price hikes due to registration that could lead to economic eviction of the poorest households, including tenants. Tenure options that safeguard against these risks, such as cooperatives and CLTs, should be promoted. Rentals should be secured during the registration process through recorded contracts to protect tenants from unaffordable rent hikes. Consideration should also be given to suitable secure tenure options that reflect the needs of households and communities with mobile lifestyles.

Settlement land information systems should be simple, affordable, accessible and transparent. People should have opportunities to contest, clarify or query recorded tenure arrangements through an appropriate process including public display of maps. Unlike conventional cadastres, settlement land information systems should reflect varied and overlapping tenure rights – not only



<sup>33</sup> Committee on Economic, Social and Cultural Rights, general comment No. 7 and the Basic Principles, paras. 21 and 38–40.

<sup>34</sup> See Paul Mundy et al., *Count me in: Surveying for tenure security and urban land management* (UN-Habitat and GLTN, 2010). Available from [www.glttn.net/index.php/resources/publications/publications-list/finish/3-glttn-documents/80-count-me-in-surveying-for-tenure-security-and-urban-land-management-eng-2010](http://www.glttn.net/index.php/resources/publications/publications-list/finish/3-glttn-documents/80-count-me-in-surveying-for-tenure-security-and-urban-land-management-eng-2010).

<sup>35</sup> International Covenant on Civil and Political Rights, arts. 21 and 22.



freehold – and the spatial realities that exist in urban settlements. For example, the Social Tenure Domain Model, developed by the Global Land Tenure Network (GLTN), enables the recording of multiple forms of individual and collective tenure, overlapping rights, and irregular spatial units in urban settlements.<sup>36</sup>

States, public and private utilities and service providers, businesses and other actors should recognize and respect the tenure rights recorded in settlement information systems, on an equal footing to established land cadastres and registries.

Professional technicians, including surveyors, planners and notaries, and the use of technology, such as satellite imagery and global positioning systems, should serve to facilitate community mapping and tenure-recording processes, and not pose an obstacle to the establishment of accessible and affordable land administration systems.

States should establish, in consultation with communities, a local dispute resolution mechanism, which is socially legitimate and culturally appropriate, to address disputes that arise during these processes. Dispute resolution mechanisms should be impartial, fair, competent, transparent and human rights-compatible, and affordable and accessible to all. Negotiation and mediation between parties to a dispute should be encouraged wherever possible in order to promote mutually beneficial outcomes that secure the tenure rights of all parties.

<sup>36</sup> Model used in Mbale under a joint project of the Ugandan Ministry of Land, Housing and Urban Development, GLTN, UN-Habitat and Slum Dwellers International. See [www.glttn.net/index.php/land-tools/social-tenure-domain-model-stdm](http://www.glttn.net/index.php/land-tools/social-tenure-domain-model-stdm).



# 3 PRIORITIZING *IN SITU* SOLUTIONS

Tenure should be secured in situ unless there are exceptional circumstances that justify eviction consistent with international human rights law. Regulations aimed at protecting public health and safety and the environment or at mitigating risk for the population should not be used as an excuse to undermine security of tenure. In situ solutions should be found whenever it is possible to:

- mitigate and manage risks of disaster and threats to public health and safety; or
- balance environmental protection and security of tenure; except when inhabitants choose to exercise their right to resettlement.



THERE ARE LEGITIMATE CIRCUMSTANCES in which resettlement in a manner consistent with international human rights law may be appropriate to protect the health and safety of inhabitants exposed to natural disasters or environmental hazards, or to preserve critical environmental resources. However, the misuse of regulations aimed at protecting public health and safety or the environment to justify eviction of poor households in the absence of genuine risk, or when other options are available, is contrary to international human rights law.<sup>37</sup>

Where a genuine risk to health and safety or the environment exists, prior to any decision to evict being made, States must explore all feasible alternatives in consultation with affected persons. Specifically, States should use all resources at their disposal, including through international assistance, to explore in situ alternatives to mitigate and manage risks, regardless of the tenure status and housing standards of inhabitants unless the inhabitants prefer to be resettled to alternative adequate housing.<sup>38</sup>

Precarious housing structures in hazard-prone areas, such as along fault lines, on steep slopes or on river banks should be prioritized for incremental upgrading for current inhabitants, whenever feasible. States should explore technical options, like the construction of embankments and retaining walls, to transform the area into a safe location for housing. For example, a participatory project in the Lower Lempa River Valley in El Salvador led to the construction of safer houses with relocation of people living in particularly hazardous areas, improved woodland management as a natural buffer to floods, and a risk management and early-warning system.<sup>39</sup> States should raise awareness among inhabitants of hazardous areas and help them to improve their living environment.<sup>40</sup>

Where settlements pose risks to environmental resources, like parks, coastlines, rivers, lakes and wetlands, States should explore options in consultation with affected

37 For standards on resettlement under international human rights law, see Committee on Economic, Social and Cultural Rights, general comments No. 7 and No. 4; and the Basic Principles.

38 Ibid.

39 A. Lavell, "The Lower Lempa River Valley, El Salvador: From Risk to Sustainability. Experience with a Risk Reduction and Development Project", in G. Bankoff, et al. (eds), *Mapping Vulnerability: Disasters, Development and People* (Earthscan, 2003).

40 See International Federation of Red Cross and Red Crescent Societies, *Participatory Approach for Safer Shelter Awareness* (2011).



people to protect both the environment and the tenure security and livelihoods of inhabitants. For example, participatory land readjustment and incremental upgrading of settlements along water bodies, including improved sanitation and waste disposal services, can address both concerns. The local government of Surabaya in Indonesia has taken successive measures in this direction, via the Settlement and Urban Infrastructure Strategies (SPPIP) programme, established in 2010. This programme improved the infrastructure conditions (pavements, drainage, waste-management) in the Bozem Morokrengangan region, including of households located along the riverbank areas.<sup>41</sup>

All potentially affected persons have the right to information about risks to health and safety or the environment, and should be afforded opportunities for active participation in the process of exploring alternatives to in situ solutions and decision-making. Any decision to resettle households should be subject to judicial review.

41 "Slums and Squatters – upgrading at local level", City of Surabaya (2013); Happy Santosa, "Environmental management in Surabaya with reference to National Agenda 21 and the social safety net programme", *Environment & Urbanization*, vol. 12, No. 2 (2000), p. 181.



# 4 PROMOTING THE SOCIAL FUNCTION OF PROPERTY

Property has a vital social function including adequate housing of the urban poor. States should balance property rights with the social function of property in designing and implementing housing and other relevant policies. In particular, States, including relevant authorities, should promote access to secure and well-located housing for the urban poor through, inter alia, the following measures:

- Conduct citywide audits of vacant and underutilized land, housing and buildings;
- Conduct assessments of spatial needs to house the urban poor, including homeless persons, taking into account current and anticipated trends;
- Allocate available public land for the provision of low-income housing;
- Adopt measures to combat speculation and underutilization of private land, housing and buildings;
- Adopt inclusive urban planning strategies and regulations;
- Adopt measures to regulate and stimulate the low-income rental market and collective forms of tenure; and
- Adopt measures to regulate the housing finance market and financial institutions.



THE INABILITY OF THE POOR TO ACCESS secure and well-located urban housing is often a direct result of policies that promote the commodification of land and housing to the detriment of their social function. As housing becomes increasingly unaffordable, especially in city centres, people have no choice but to resort to insecure self-help alternatives, including sleeping in public places.

Policies that promote the social function of property aim to ensure that land is allocated, used and regulated in a manner that serves both individual and collective needs.<sup>42</sup> Limitations are placed on private property rights for the purpose of promoting social interests and the general welfare.<sup>43</sup> States inherently recognize the social function of land through, inter alia, the collection of property taxes, the exercise of expropriation powers for the public good, adverse possession laws, and urban planning that designates spaces for public use and environmental protection. States should take further measures to ensure both private and public land is used optimally to give effect to its social function, including adequate housing of the urban poor.



**AUDITS OF UNUSED LAND AND HOUSING AND ASSESSMENTS OF HOUSING NEEDS.** An audit of unused and underutilized land, housing and buildings, both public and private, should be conducted concurrently with an assessment of the housing needs of the urban poor, including homeless persons, with the objective of matching availability with spatial needs. The assessment of current and anticipated housing needs should take into account patterns of urbanization and trends in migration, population growth and ageing. In South Africa, for example, the City of Cape Town was ordered by the High Court to conduct an audit of unused land plots to accommodate people facing eviction.<sup>44</sup>

42 See Leticia Osorio, *The Social Function of Property and the Human Rights to Security of Tenure in Latin America with a Particular Focus on Brazil* (University of Essex, 2013).

43 See Buenos Aires Province, Law 14.449, arts. 10 and 11.

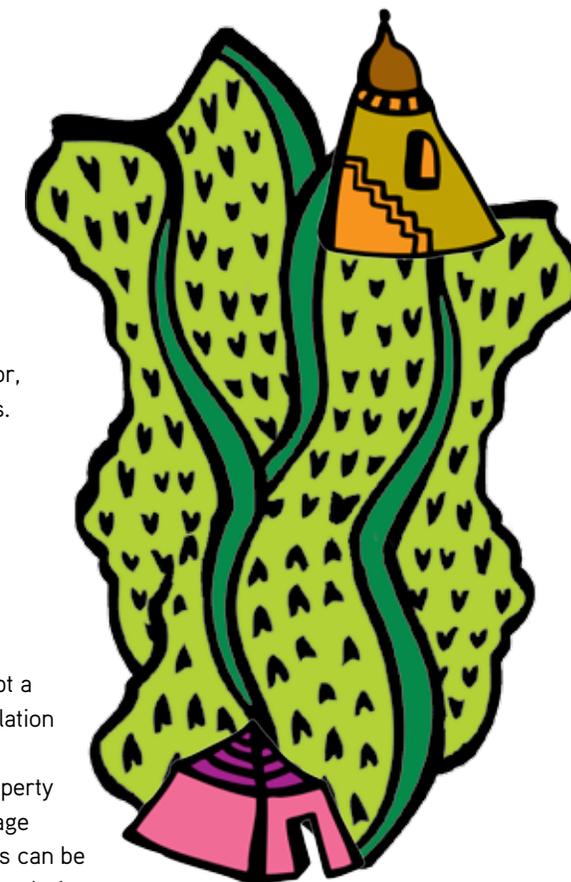
44 *Lyton Props and Robert Ross v. Occupiers of isiQalo and City of Cape Town*, judgement of 3 June 2013.

**ALLOCATION OF PUBLIC LAND FOR THE PROVISION OF HOUSING.**

States should utilize available public land, including land obtained by municipalities through tax foreclosures and other means, to meet current and anticipated housing needs of the urban poor, using suitable secure tenure arrangements. States may choose to provide adequate housing or ensure that the conditions exist to enable recipients to construct or rehabilitate housing themselves.

**MEASURES TO COMBAT SPECULATION AND UNDERUTILIZATION OF PRIVATE LAND AND HOUSING.**

States should adopt a range of measures to curb property speculation and the underutilization of private land and housing. Tax liabilities on underutilized property can be progressively increased to discourage speculation and neglect.<sup>45</sup> Public authorities can be empowered to acquire rights in unused parcels for use for low-income housing. In Colombia, the Urban Reform Law establishes the Priority Development Declaration, under which owners of vacant land unwilling to put it back into use are compelled to sell. If the land is not sold at auction, the State can expropriate the land at 70 per cent of its tax-base value for social housing purposes.<sup>46</sup> The Netherlands has used an alternative scheme allowing local authorities to temporarily take over management of an empty property for social rental housing. Renovation of the property, paid for by the local authority, can be reimbursed through rent, with both tenant and owner benefiting from the rehabilitation.<sup>47</sup>



45 Tax liability should not apply to vacant property because its owner has been forcibly displaced and is unable to return.

46 Law No. 9 of 1989, modified by Law No. 388 of 1997 (questionnaire response from Colombia). María Mercedes Maldonado, "Fortalezas y fisuras del uso de la expropiación para fines urbanos en Colombia. Revisión a partir de la experiencia de Bogotá" in *Expropiación y conflicto social en cinco metrópolis latinoamericanas*, Antonio Azuela (coord.) (Mexico, UNAM, 2013), pp. 231–268.

47 See United Kingdom, Office of the Deputy Prime Minister, *Empty Homes: Temporary Management, Lasting Solutions: A consultation paper* (London, 2003), paras. 52 and 57 and annex 5.

**INCLUSIVE URBAN PLANNING.** Inclusive urban planning is instrumental in promoting integrated communities and ensuring that well-located housing is available to the poor. Inclusionary zoning requires that a proportion of neighbourhood property be allocated to low-income dwellings; and, if combined with a mandate to maintain affordability over time, it can provide adequate housing for the urban poor. Inclusive parcelling and development regulations require that a proportion of new housing developments is reserved for low-income housing. For example, in France, 25 per cent of all new housing developments in an urban area with a population of more than 50,000 must be allocated to social housing.<sup>48</sup> Similar policies exist in Canada, Colombia, Chile, Ireland, Maldives, the United States, England and Scotland, among others.<sup>49</sup> A ceiling on plot sizes in residential zones can also lower housing costs by promoting higher-density accommodation.

Inclusive urban renewal can be facilitated by participatory land readjustment processes. Communities jointly plan and redevelop their pooled land plots to improve infrastructure and services, and in some cases densify the area.<sup>50</sup> Fragmented land plots are assembled and then re-parcelled to achieve a better use of urban space.

#### MEASURES TO REGULATE FINANCIAL MARKETS AND INSTITUTIONS.

The deregulation of financial markets, along with policies prioritizing homeownership, has had adverse impacts on many urban-poor households.<sup>51</sup> Sub-prime loans, payment defaults and foreclosures have led to tenure insecurity and evictions in several countries.<sup>52</sup> Often, financial institutions, including microcredit institutions, charge higher interest rates to the poor to mitigate the heightened risk of default. In some cases, lenders have aggressively targeted low-income households for loans with exploitative terms, without explaining the terms and conditions, and ignoring their ability to repay.<sup>53</sup> States should prohibit predatory lending practices and adopt regulations to ensure that mortgage payments are commensurate with income levels and do not compromise the satisfaction of other basic needs. Regulations should also mandate the full disclosure and communication of loan terms to applicants in accessible formats and languages.<sup>54</sup>

48 Law No. 2013-61 (questionnaire response from France).

49 Questionnaire responses from Chile, Colombia, France, Maldives, Thailand and the United Kingdom.

50 See Participatory and Inclusive Land Readjustment Approach (PiLaR), GLTN and UN-Habitat at: [www.glt.net/index.php/projects/participatory-and-inclusive-land-readjustment-pilar](http://www.glt.net/index.php/projects/participatory-and-inclusive-land-readjustment-pilar).

51 See A/67/286 and A/68/289.

52 See, for example, Special Rapporteur's report on her mission to the United States of America, A/HRC/13/20/Add.4, paras. 47–48.

53 See Elvin K. Wyly, et al., "American Home: Predatory mortgage capital and neighbourhood spaces of race and class exploitation in the United States", *Swedish Society for Anthropology and Geography*, 88B, pp. 105–132.

54 In this context, see *Gudwana v. Steko Development CC and Others*, judgement of South African Constitutional Court, 11 April 2011.



Regulatory safeguards should be put in place to protect households facing default and foreclosure, including prohibiting eviction until the household has access to alternative adequate housing. In England and Wales, a pre-action protocol for possession claims obliges lenders and borrowers to follow procedures aimed at ensuring that repossession is a last resort after all reasonable attempts to resolve the situation have failed.<sup>55</sup> In Richmond, California, the municipality voted to use its powers of eminent domain to seize mortgages of households that have defaulted or are at risk of default, when the investor refuses to sell. Under the scheme, the City pays the investor the current market value for the mortgage, often considerably less than the amount owing, and then supports affordable refinancing options for the homeowner.<sup>56</sup> A decree-law in Andalucía, Spain, currently under appeal, allows the local Government to expropriate empty residences that have been repossessed by banks and developers in order to house families who have lost their homes.<sup>57</sup>



55 Available from [www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot\\_mha](http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_mha).

56 Lydia Depillis, "Richmond's rules: Why on California town is keeping Wall Street up at night", *The Washington Post*, 5 October 2013. Available from [www.washingtonpost.com/blogs/wonkblog/wp/2013/10/05/richmonds-rules-why-one-california-town-is-keeping-wall-street-up-at-night/](http://www.washingtonpost.com/blogs/wonkblog/wp/2013/10/05/richmonds-rules-why-one-california-town-is-keeping-wall-street-up-at-night/).

57 Comunidad Autónoma de Andalucía, Decree-Law 6/2013; Navarra, Autonomous Law 24/2013. Under these decrees, lenders receive 2 per cent of the value of the property each year and can recover legal possession after three years. Both measures are currently under appeal by the central Government in the light of the Constitutional protection of property.



# 5 COMBATING DISCRIMINATION ON THE BASIS OF TENURE

Non-discrimination on the basis of tenure status must be guaranteed and protected in law, policy and practice. This guarantee must apply to all forms of tenure. Non-discrimination on the basis of tenure status must be guaranteed in the context of, inter alia:

- Access to basic services and facilities;
- Access to social security;
- The collection and presentation of official data;
- Land administration programmes;
- Housing legislation and policies;
- Urban planning;
- Land acquisition and use for public purposes;
- Police procedures; and
- Humanitarian assistance, including access to shelter.



**THE PRINCIPLE OF NON-DISCRIMINATION** is a pillar of international human rights law.<sup>58</sup> Discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights.<sup>59</sup>

Property status and place of residence, including a settlement that is not legally recognized, are prohibited grounds of discrimination.<sup>60</sup> States should adopt deliberate, concrete and targeted measures to combat discrimination against individuals and groups on the basis of their tenure status in the enjoyment of their human rights.<sup>61</sup> The prohibition on discrimination applies whether or not the tenure arrangements are recognized under law, and whether or not there is documentary evidence of tenure status.

**ACCESS TO BASIC SERVICES AND FACILITIES.** People without an officially recognized tenure status are often denied access to basic services and facilities. In some situations, public and private service providers, including of water, sanitation and electricity, require the presentation of title as a prerequisite for connection or delivery. In other situations, access to social facilities, such as school enrolment, is conditional on a registered address. States should take measures to ensure that access to basic services and facilities, whether publicly or privately provided, is not dependent on tenure status, official registration of residence, or the presentation of title.<sup>62</sup>

**ACCESS TO SOCIAL SECURITY.** Social security is critical to guaranteeing human dignity and the enjoyment of human rights when people are faced with circumstances that deprive them of their capacity to otherwise realize them.<sup>63</sup> Sometimes homeless persons or individuals without a registered address are unable to access social security either owing to eligibility criteria or indirect bureaucratic obstacles.<sup>64</sup> These obstacles amount to discrimination on the basis of tenure status. States should take all necessary steps to remove barriers faced by persons who are homeless or have an ambiguous tenure status in receiving social security, including by ensuring that a registered address and other residence requirements are not a de jure or de facto prerequisite to receiving benefits.

58 International Covenant on Economic, Social and Cultural Rights, art. 2, para. 2.

59 See Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination, para. 2.

60 Ibid., paras. 25 and 34.

61 Ibid., para. 36.

62 Ibid., general comment No. 15 (2002) on the right to water, para. 16.

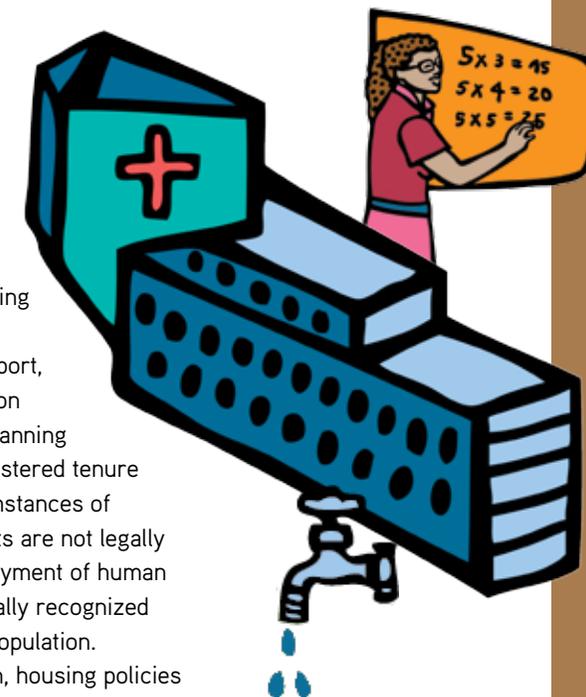
63 Ibid., general comment No. 19 (2007) on the right to social security, para. 1.

64 Ibid., general comments No. 20, para. 29; No. 19, paras. 4, 39 and 64.

**THE COLLECTION OF OFFICIAL DATA.** Individuals without legally recognized tenure, including those living in urban settlements, homeless and displaced persons, are often not covered in censuses and other official data collection. When their information is ignored, their lack of legal tenure status effectively denies them official recognition as members of society.<sup>65</sup> This exclusion exacerbates their invisibility in policy design and budget allocations essential to the realization of their human rights. States should ensure that such individuals are counted and included in all official data collection processes.<sup>66</sup>

### **LAND ADMINISTRATION PROGRAMMES, HOUSING POLICIES AND URBAN PLANNING.**

Discrimination on the basis of tenure status is prevalent in land, housing and urban policies. Land administration programmes typically only register freehold rights, while ignoring the multiple other existing tenure forms.<sup>67</sup> Housing policies commonly also promote freehold, with benefits and support, such as access to finance, made conditional on homeownership.<sup>68</sup> Meanwhile, many urban planning processes aim to benefit only those with registered tenure rights and fail to take into account the circumstances of urban poor communities whose arrangements are not legally recognized. These exclusions impair the enjoyment of human rights by those without freehold or other legally recognized tenure rights vis-a-vis other sectors of the population. States should ensure that land administration, housing policies and urban plans protect and secure a variety of tenure arrangements, prioritizing the most vulnerable and marginalized. For example, the Mexico City Housing Improvement Programme offers credit regardless of tenure status.<sup>69</sup>



65 See Sheela Patel and Carrie Baptist, "Documenting the undocumented", *Environment and Urbanization*, 24, No. 3, March 2012, p. 3.

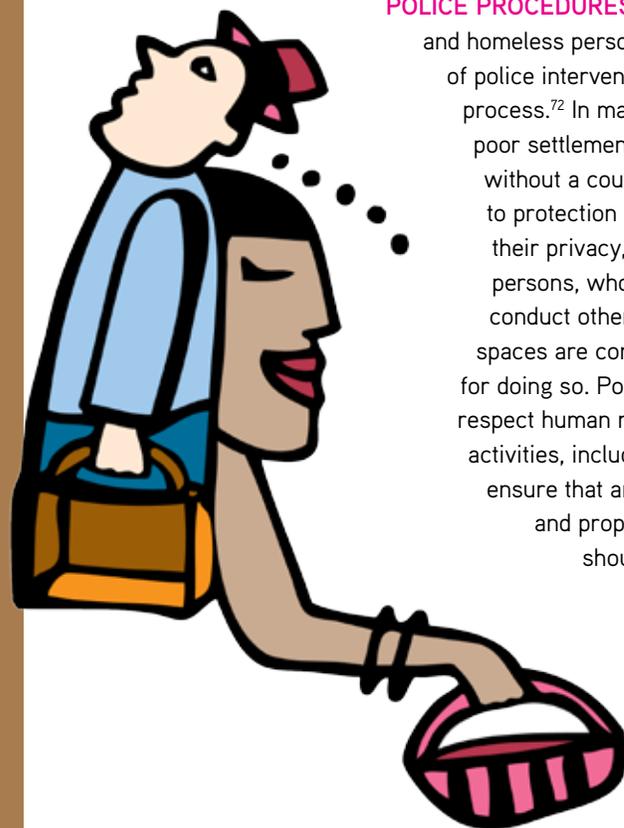
66 See Uruguay, 2011 census with disaggregated data on housing based on all forms of tenure (its response to the questionnaire).

67 Natalie Bugalski, *A Human Rights Approach to Development of Cambodia's Land Sector: A discussion paper* (Equitable Cambodia and Heinrich BöllStiftung, 2012), pp. 22–25 and 35–36.

68 A/67/286 and A/68/289.

69 See [www.casayciudad.org.mx/publicaciones/PMVUNAEXP.pdf](http://www.casayciudad.org.mx/publicaciones/PMVUNAEXP.pdf).

**LAND ACQUISITION.** Land occupied by urban poor households with an ambiguous tenure status is disproportionately acquired by States for "public purpose" projects, such as infrastructure development, requiring the eviction of residents.<sup>70</sup> This situation may amount to discrimination in the enjoyment of the right to adequate housing on the basis of tenure and economic status. In selecting sites for public purpose projects,<sup>71</sup> States should ensure that the urban poor are not disproportionately affected, and that all alternatives have been considered.



**POLICE PROCEDURES.** Residents of urban settlements and homeless persons face disproportionate levels of police intervention and use of force without due process.<sup>72</sup> In many countries, police enter homes in poor settlements, sometimes in major operations, without a court order, violating residents' rights to protection against arbitrary interference with their privacy, family and home.<sup>73</sup> Homeless persons, who have no choice but to sleep, eat and conduct other life-sustaining activities in public spaces are commonly harassed, fined and detained for doing so. Police must follow due process and respect human rights in conducting law enforcement activities, including in urban settlements, and ensure that any use of force is strictly necessary and proportional to lawful objectives. States should decriminalize homelessness and ensure full respect by police of human rights of homeless persons.<sup>74</sup>



#### ACCESS TO HUMANITARIAN

**ASSISTANCE.** Sometimes tenure documentation, such as title, is a prerequisite to establishing eligibility for humanitarian assistance to ensure the sustainability of the assistance provided and avoid fraudulent tenure claims and future conflict.<sup>75</sup> However, often those most in need are displaced, landless and/or tenure insecure, and may not hold title or evidence of occupancy in their names, or may have lost their documentation during the conflict or disaster. In many contexts, various forms of customary tenure that do not rely on documentary evidence are dominant and can provide a reliable basis for durable shelter assistance.

States, including donors, in cooperation with humanitarian actors, should ensure that all disaster and conflict-affected persons, irrespective of their tenure status and without discrimination of any kind, have access to emergency shelter. A rapid assessment of the land tenure situation should be conducted, recognizing the multiple tenure arrangements that exist or existed prior to the conflict or disaster.<sup>76</sup> Non-documented evidence of tenure, like testimonies from neighbours, should be collected during this process. The findings should be used to design measures to facilitate the delivery of housing recovery and reconstruction assistance to those in need, including through negotiation and mediation to resolve disputes over tenure rights. Measures should also be taken to ensure access to adequate housing to those without evidence of tenure, such as homeless persons.

<sup>70</sup> See Richard Ballard, "Geographies of development: Without the poor", *Progress in Human Geography*, 36, No. 5, pp. 563-572.

<sup>71</sup> Basic Principles, para. 21.

<sup>72</sup> See Special Rapporteur on extreme poverty and human rights, final draft of the Guiding Principles on Extreme Poverty and Human Rights, A/HRC/21/39, paras. 64 et seq.

<sup>73</sup> International Covenant on Civil and Political Rights, art. 17.

<sup>74</sup> See NLCHP, *Criminalizing Crisis* (2011), pp. 7-8; United States, Interagency Council on Homelessness, *Searching out Solutions: Constructive alternatives to the criminalization of homelessness* (2012), p. 7.

<sup>75</sup> UN-Habitat, *Land and Natural Disasters: Guidance for Practitioners* (2010), pp. 64, 67, 75 and 80-81.

<sup>76</sup> *Ibid.*, chap. 3.



# 6 PROMOTING WOMEN'S SECURITY OF TENURE

Both de jure and de facto gender equality are essential to the enjoyment of the right to adequate housing. In this regard, States must strengthen and protect women's security of tenure, regardless of age, marital, civil or social status, and independent of their relationships with male household or community members

**DISCRIMINATION ON THE BASIS OF SEX** exists under all types of land tenure systems. Patriarchal laws, attitudes and customs affect the governance of land in many societies. The financialization of land and housing has, in some cases, further marginalized women and reduced their tenure security.<sup>77</sup>

States should guarantee the right of women to security of tenure, independent of their relationships with males or community members. States should adopt legislative and administrative measures to prohibit and eliminate discrimination against women in this respect by, inter alios, landlords, public housing providers and credit institutions. States should remove barriers to formal and substantive gender equality whether in laws, policies or programmes affecting tenure. The legal recognition and promotion of diverse tenure arrangements is crucial to removing barriers to tenure security for women, since, currently, they are much less likely than men to own land.<sup>78</sup>

States should adopt measures to strengthen women's registration of tenure rights. The registration of tenure rights in joint or multiple names, including of women, should be promoted as standard procedure, in order to avoid de jure or de facto discrimination if registration is authorized solely in the name of the head of the household. For example, in Tajikistan, law reform in 2004 made it mandatory to list all family members on certificates when families receive plots of land from former collective farms.<sup>79</sup> Practical measures include requiring men and women to be present at the registration process, during which all documentation should be read aloud and explained; and providing space on documentation for recording multiple names. Under the Ethiopian land certification programme, for example, certificates are issued jointly with photos of both husband and wife.<sup>80</sup> Incentives can also be used to promote registration of tenure rights in the name of women. For example, in 2006, Nepal introduced a partial tax exemption for plots of land registered to women.<sup>81</sup>

In relation to customary and religious tenure systems, States should adopt measures, in consultation with communities, and with due respect for the rights of indigenous peoples and religious freedom, to eliminate

<sup>77</sup> See Special Rapporteur's report, A/HRC/19/53.

<sup>78</sup> International Center for Research on Women, [www.icrw.org/what-we-do/property-rights](http://www.icrw.org/what-we-do/property-rights).

<sup>79</sup> Law amending the Land Code, art. 15.

<sup>80</sup> Klaus Deininger, "Rural Certification in Ethiopia Empowers Women", March 2008. Available from <http://go.worldbank.org/NGH3VV93Y0>.

<sup>81</sup> Laura Turquet et al., *In Pursuit of Justice: 2011-2012 Progress of the World's Women* (UN-Women, 2011), p. 22. Available from <http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf>.

discriminatory practices that deny women security of tenure. Efforts should be made to engage and cooperate with community and religious leaders in designing and implementing such measures. Women-led initiatives, in particular, should be supported. For instance, on Erromango Island, Vanuatu, women have challenged custom and successfully claimed land rights in the absence of male heirs.<sup>82</sup>

States should take measures to protect the tenure security and promote inheritance rights of women and girls in the case of the death of a spouse, father, brother, son or other male household member so that they are able to continue residing in the family home. States should also take measures to address the vulnerability of women and children to tenure insecurity due to a breakdown of spousal relations, including as a result of domestic violence.<sup>83</sup> Women and children's security of tenure should be prioritized in these circumstances. Many legal systems authorize the victim of domestic violence to stay in the family home, and order the removal of the perpetrator. For example, in Serbia, the Family Law authorizes the courts to issue an order for the removal of the perpetrator of domestic violence from the family home, allowing the victim to remain in the home, regardless of ownership (art. 198 (2)). When remaining in the family home is not feasible, States should ensure victims have access to alternative adequate housing with secure tenure.

In humanitarian settings, women and children are particularly vulnerable to tenure insecurity, homelessness and other human rights violations. States should prioritize safe emergency shelter to women and children until durable housing solutions are established. States should ensure that women are able to access humanitarian assistance and exercise their right to return, restitution and resettlement regardless of their family status or whether their name is recorded on tenure documentation.

<sup>82</sup> UN-Women and OHCHR, *Realizing women's rights to land and other productive resources* (New York and Geneva, 2013), p. 33. Available from [www.unwomen.org/-/media/Headquarters/Attachments/Sections/Library/Publications/2013/11/OHCHR-UNWomen-land-rights-handbook-WEB%20pdf.pdf](http://www.unwomen.org/-/media/Headquarters/Attachments/Sections/Library/Publications/2013/11/OHCHR-UNWomen-land-rights-handbook-WEB%20pdf.pdf).

<sup>83</sup> Committee on the Elimination of Discrimination against Women, communication No. 2/2003, *A.T. v. Hungary*, Views adopted on 26 January 2005.



# 7 RESPECTING SECURITY OF TENURE IN BUSINESS ACTIVITIES

Business enterprises should take all relevant steps to ensure that:

- there are no adverse impacts on security of tenure as a result of or in connection with their activities or business relationships; and
- any adverse impacts are addressed, including through the provision of remedies to affected persons.

Business enterprises should ensure transparent, free and fair negotiations regarding any transfer or modification of tenure rights with full respect for the right of people or communities to accept or reject offers.

**TENURE SECURITY OF THE URBAN POOR** is affected by the activities of a diverse range of business actors, including property developers, construction companies, speculators, real-estate agencies, landlords, mega-event organizers and banks. While States must protect all individuals against violations of human rights, business enterprises also have human rights responsibilities.<sup>84</sup> The responsibility to respect the right to adequate housing requires that business enterprises avoid causing or contributing to infringements of the right, and address adverse impacts when they occur. It requires that business enterprises seek to prevent adverse impacts on, inter alia, security of tenure that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.<sup>85</sup>

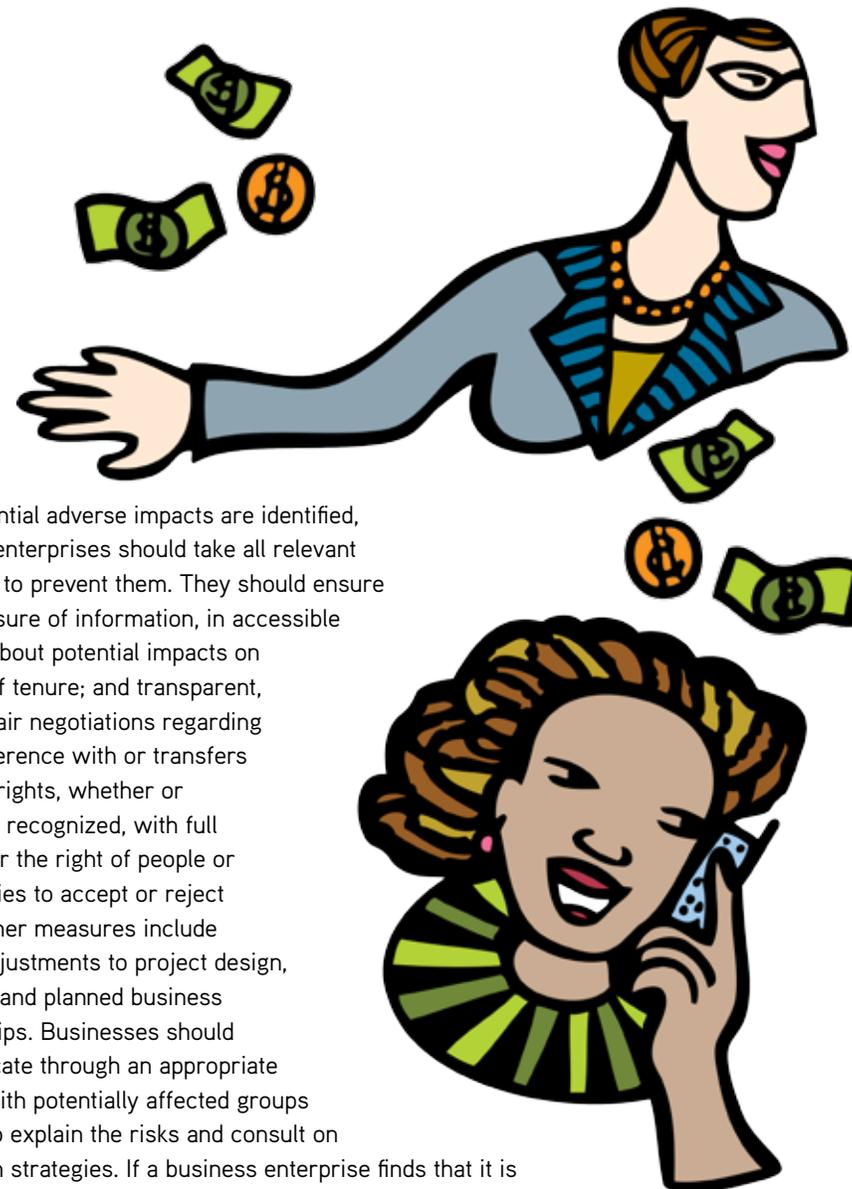
As part of their human rights due diligence, business enterprises should regularly assess the potential and actual impacts on tenure security of their activities and those directly linked to their operations, products and services, paying special attention to vulnerable people, including the urban poor. Business enterprises should engage independent experts on security of tenure in relevant countries or contexts, and meaningfully consult with potentially affected groups and other relevant stakeholders. Business enterprises should promptly investigate any allegations of potential or actual adverse impacts on tenure security.<sup>86</sup>



<sup>84</sup> Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.

<sup>85</sup> *Ibid.*, para. 13 (a) and (b).

<sup>86</sup> *Ibid.*, paras. 12, 17 (b), 18, 21.



If potential adverse impacts are identified, business enterprises should take all relevant measures to prevent them. They should ensure full disclosure of information, in accessible formats, about potential impacts on security of tenure; and transparent, free and fair negotiations regarding any interference with or transfers of tenure rights, whether or not legally recognized, with full respect for the right of people or communities to accept or reject offers. Other measures include making adjustments to project design, locations, and planned business relationships. Businesses should communicate through an appropriate channel with potentially affected groups in order to explain the risks and consult on prevention strategies. If a business enterprise finds that it is not possible to prevent adverse impacts, it should abandon or terminate the proposed or active operation, investment or business relationship. For example, a proposed business venture that would foreseeably result in forced eviction should be either adapted to avoid human rights violations or abandoned altogether.

If a business enterprise causes or contributes to adverse impacts on security of tenure, including through its business relationships, it should immediately take all relevant steps to address it. If an impact is current or ongoing, the business enterprise should immediately cease the activity causing it. If an adverse impact, such as a forced

eviction, has already occurred, the business enterprise should provide remediation through legitimate processes and in consultation with the affected individuals or groups to ensure that the remedy is comprehensive and legitimate in their view. When people have been forcibly evicted or displaced, remedy should include return of the land, housing and resources to the victims and compensation for any losses, including of livelihood. When return of the land and housing is impossible, for example, when it has been destroyed, or when the business enterprise is not in a position to ensure its return, all possible steps should be taken to ensure other forms of reparations, such as secure alternative land and housing of the same or better quality and location.<sup>87</sup>

Business enterprises should publicly commit to taking all relevant steps to prevent and remedy adverse impacts on security of tenure. For example, in 2013, the Coca-Cola Company responded to a global campaign, "Sugar Rush", launched by Oxfam urging food and beverage companies to respect land rights by committing to a "plan of action to prevent and address land grabs and other land controversies in [its] supply chain".<sup>88</sup> The company committed to conducting human rights impact assessments; public disclosure of suppliers; adherence to the principle of free, prior and informed consent for all communities; resolution of land disputes through appropriate grievance mechanisms; and working with suppliers on corrective action and terminating the relationship if such action is not taken.

Real-estate investments of a predominantly speculative nature can have the effect of undermining security of tenure of the urban poor by contributing to the unaffordability of land and housing. The result may be regression in the enjoyment of the right to adequate housing and increased homelessness. Business enterprises should refrain from entering into such property investments to avoid these adverse human rights impacts.

Banks and other credit institutions should act with due diligence in relation to the impact on security of tenure of their private lending and asset-based securitization operations. Banks should pay special attention to individuals or groups at heightened risk of losing their home as a result of the loan. Lending programmes that may undermine tenure security should be abandoned or safeguards put in place, such as measures to ensure applicants fully understand the terms of the loan, including the implications of default; flexible repayment options in cases of financial hardship; and policy and contractual commitments not to apply for an eviction from a foreclosed home until alternative adequate housing has been arranged. Predatory lending practices are incompatible with the responsibility of business to respect human rights and should be banned by banks and credit institutions.

<sup>87</sup> Basic Principles, paras. 59–68.

<sup>88</sup> <http://assets.coca-colacompany.com/6b/65/7f0d386040fcb4872fa136f05c5c/proposal-to-oxfam-on-land-tenure-and-sugar.pdf>.





# 8 STRENGTHENING SECURITY OF TENURE IN DEVELOPMENT COOPERATION

Multilateral and bilateral development agencies should ensure that their operations and projects promote and do not undermine security of tenure, including by adopting binding safeguard policies that aim to give effect to the right to adequate housing. Such agencies should support States lacking sufficient resources to take all necessary measures to strengthen security of tenure of the urban poor.



**MULTILATERAL AND BILATERAL DEVELOPMENT AGENCIES** regularly provide financial and technical assistance to operations that affect tenure security, including infrastructure development; land management, administration and spatial planning; urban development and renewal; settlement upgrading; and policy reforms in, inter alia, the housing and financial sectors. They also provide financing to diverse private sector activities that impact tenure.

Multilateral and bilateral development agencies should provide financial and technical assistance to countries lacking sufficient resources to strengthen security of tenure.<sup>89</sup> However, they must ensure that all operations serve to strengthen and prioritize the tenure security of vulnerable and marginalized persons and groups. Impact assessments should be conducted in relation to all public and private operations before assistance is provided. The guiding principles should guide development agencies in ensuring that their operations support, promote and strengthen a variety of tenure forms and increase access to well-located housing for the urban poor.

In this regard, multilateral and bilateral development and finance agencies, including export credit agencies, should adopt binding safeguard policies on resettlement and security of tenure that aim to give effect to the right to adequate housing. While the World Bank, the International Finance Corporation, regional development agencies and some export credit agencies have commendably adopted policies on resettlement, these safeguards and their implementation should be strengthened to reflect human rights standards and extended to protect and promote security of tenure.<sup>90</sup>

<sup>89</sup> See International Covenant on Economic, Social and Cultural Rights, arts. 2 and 11.

<sup>90</sup> Special Rapporteur's report on her mission to the World Bank, A/HRC/22/46/Add.3.





# 9 EMPOWERING THE URBAN POOR AND HOLDING STATES ACCOUNTABLE

Urban poor individuals and communities are essential actors in strengthening tenure security. States should be accountable to the urban poor for the implementation of these guiding principles by, inter alia:

- Making tenure-related information public and accessible to all in a timely manner;
- Ensuring transparency of all decision-making, including reasons for decisions;
- Guaranteeing free, informed and meaningful participation of the urban poor in the design and implementation of measures to secure their tenure status;
- Developing contextually appropriate indicators and benchmarks against which to measure progress and regressions; and
- Periodic reporting of progress at national and international levels.

**THE URBAN POOR SHOULD DRIVE** the process of strengthening their tenure security. Global experience shows that the realization of the right to adequate housing depends as much upon the mobilization and advocacy of social movements as the concerted efforts of States. Governmental and other relevant actors should support the empowerment of urban poor individuals and communities by being accountable for the implementation of these principles.

Public access to information and transparency in decision-making are central to accountability because they allow for scrutiny and critical debate, including through the media. Free and meaningful consultation and active participation of people who are potentially affected ensures that their views and concerns are taken into account throughout the process. These measures are crucial to ensure the social and political legitimacy of tenure security programmes.

While some of these principles focus on immediate obligations, the implementation of many measures is, by nature, a progressive process. States must demonstrate that they are taking deliberate, concrete and targeted steps as expeditiously and effectively as possible, including through the design and implementation of a plan of action for strengthening security of tenure.<sup>91</sup> States should conduct baseline surveys of tenure security, develop quantitative and qualitative indicators and set benchmarks against which to monitor progress, evaluate outcomes and inform decision-making. Indicators and benchmarks should be designed to measure progress in, inter alia:

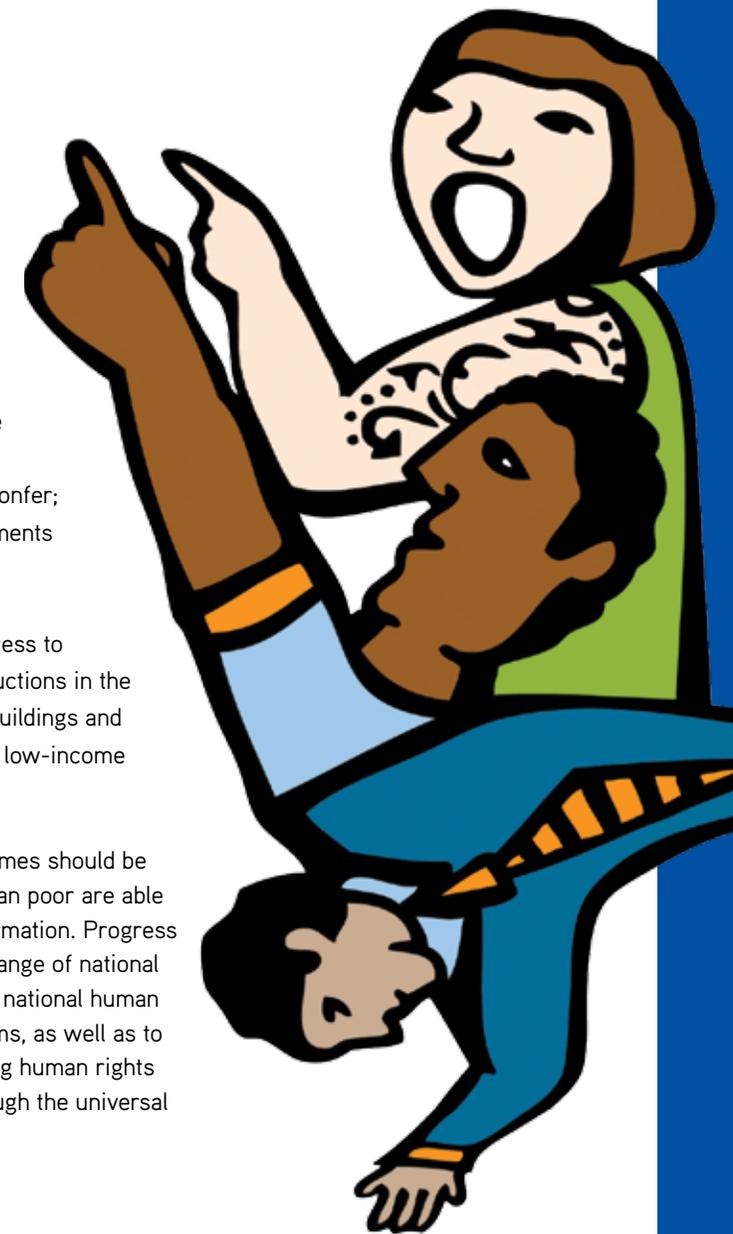


<sup>91</sup> Committee on Economic, Social and Cultural Rights, general comment No. 3, paras. 2 and 9.

- promoting a variety of tenure forms;
- the degree of security they confer;
- securing the tenure arrangements of marginalized groups;
- reducing discrimination; and
- achieving more equitable access to urban housing, including reductions in the number of vacant plots and buildings and the proportion used to house low-income households.<sup>92</sup>

All data on progress and outcomes should be made public, ensuring that the urban poor are able to access and understand the information. Progress reports should be presented to a range of national mechanisms, such as legislatures, national human rights institutions, and public forums, as well as to international mechanisms, including human rights treaty bodies and the Council through the universal periodic review.

<sup>92</sup> See OHCHR, *Human Rights Indicators: A Guide to Measurement and Implementation* (New York and Geneva, 2012) ([www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx](http://www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx)); UN-Habitat, *Monitoring tenure security in cities: People, Land and Policy* (Nairobi, GLTN, 2011) ([www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3261](http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3261)).





# 10 ENSURING ACCESS TO JUSTICE

Tenure status should not pose a barrier to people in accessing an effective remedy for the violation of human rights. States must ensure access to effective administrative and /or judicial remedies for violations of the right to adequate housing, due to, inter alia:

- Discrimination on the basis of tenure status, including multiple discrimination;
- Discrimination on the basis of any prohibited ground in the enjoyment of security of tenure;
- Failure to adopt appropriate and timely measures to address tenure insecurity of the urban poor; and
- The undermining of security of tenure including through forced eviction.

**THE URBAN POOR FACE SIGNIFICANT BARRIERS** in accessing justice, owing to, *inter alia*, political influence and corruption in courts and administrative bodies; prohibitive costs of legal representation; absence of legal information; and lack of legal recognition of persons without official identity documentation, including a registered address.<sup>93</sup> States should take all measures to remove these barriers and ensure that the urban poor can access effective remedies through a range of judicial and administrative mechanisms. As an alternative to the courts, land dispute and grievance mechanisms that are inexpensive, accessible, socially legitimate and rule-bound should be established. States should establish, fund and enable legal aid and assistance for the urban poor, in order to address power asymmetries that pervade conflicts over land and obstruct access to justice.

Remedies for violations of the right to adequate housing may include restitution, reparation,<sup>94</sup> the provision of alternative adequate housing, rehabilitation of housing or livelihoods, financial or non-financial compensation for loss and damage, and punitive sanctions against the perpetrator. An injunction, precautionary measures or other judicial or administrative intervention may be required to prevent imminent forced eviction or other violation. Remedies may also include repeal or amendment of law or policy and quashing of administrative decisions. In this regard, States should ensure that policies and decisions affecting tenure security are subject to administrative and judicial review. In the case of an unjustified failure of the State to adopt appropriate and timely measures to address tenure insecurity taking into account its use of available resources, redress may include an injunction to devise and implement a reasonable plan of action towards security of tenure for aggrieved groups.<sup>95</sup>

<sup>93</sup> See report of the Special Rapporteur on extreme poverty and human rights, A/67/278.

<sup>94</sup> See 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.

<sup>95</sup> See *Government of South Africa and others v. Grootboom and others*, judgement of the Constitutional Court of South Africa, 2000.



# ANNEX



The Human Rights Council adopted a resolution including some references to security of tenure, the guiding principles and the Special Rapporteur's report at the end of its 25<sup>th</sup> session, as follows.

## HUMAN RIGHTS COUNCIL RESOLUTION A/HRC/25/17

Twenty-fifth session

Agenda item 3

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Algeria, Andorra\*, Angola\*, Austria, Belgium, Benin, Bolivia (Plurinational State of)\*, Bosnia and Herzegovina\*, Brazil, Chile, Colombia\*, Congo, Costa Rica, Côte d'Ivoire, Croatia\*, Cyprus\*, Denmark\*, Djibouti\*, Ecuador\*, El Salvador\*, Estonia, Finland\*, France, Georgia\*, Germany, Greece\*, Guatemala\*, Haiti\*, Honduras\*, Hungary\*, Iceland\*, Ireland, Italy, Latvia\*, Lithuania\*, Luxembourg\*, Maldives, Mexico, Moldova (Republic of)\*, Montenegro, Morocco, Netherlands\*, Norway\*, Panama\*, Paraguay\*, Peru, Poland\*, Portugal\*, Romania, Saint Kitts and Nevis\*, Senegal\*, Serbia\*, Slovakia\*, Slovenia\*, Spain\*, Sweden\*, Switzerland\*, the former Yugoslav Republic of Macedonia, Thailand\*, Tunisia\*, Turkey\*, Ukraine\*, Uruguay\*, Venezuela (Bolivarian Republic of)

## ADEQUATE HOUSING AS A COMPONENT OF THE RIGHT TO AN ADEQUATE STANDARD OF LIVING THE HUMAN RIGHTS COUNCIL,

- Reaffirming that international human rights law instruments, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, entail obligations and commitments of States parties in relation to access to adequate housing,
- Recalling all previous resolutions adopted by the Commission on Human Rights on the issue of women's equal rights to ownership of, access to and control over land and the equal rights to own property and to adequate housing, including resolution 2005/25 of 15 April 2005,
- Recalling also its resolutions 5/1, on institution-building of the Human Rights Council, and 5/2, on the Code of Conduct for Special Procedures Mandate Holders of the Council, of 18 June 2007, and stressing that the mandate holder shall discharge his/her duties in accordance with those resolutions and the annexes thereto,

\* Non-member State of the Human Rights Council.

- Recalling all its previous resolutions, as well as those adopted by the Commission on Human Rights on the issue of adequate housing as a component of the right to an adequate standard of living, including Council resolution 19/4 of 22 March 2012,
- Reaffirming also the principles and commitments with regard to adequate housing enshrined in the relevant provisions of declarations and programmes adopted by major United Nations conferences and summits and at special sessions of the General Assembly and at their follow-up meetings, inter alia, the Istanbul Declaration on Human Settlements and the Habitat Agenda, and the Declaration on Cities and Other Human Settlements in the New Millennium<sup>1</sup>, adopted at the twenty-fifth special session of the Assembly and annexed to its resolution S-25/2 of 9 June 2001,
- Noting the work of the United Nations treaty bodies, in particular the Committee on Economic, Social and Cultural Rights, in the promotion of the rights related to adequate housing, including all its relevant general comments,
- Recalling the Global Housing Strategy of the United Nations Human Settlements Programme, the principles on housing and property restitution for refugees and displaced persons<sup>2</sup> and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security,
- Concerned that more than 860 million people are still living in unserviced and unplanned urban poor settlements, up from 725 million in 2000; that, despite the significant efforts to improve the living conditions of urban settlement dwellers, the net growth in the number of people living in these settlements continues to outpace the improvements; and that persons living in such conditions are particularly vulnerable to, inter alia, disease, natural and man-made disasters, unemployment and a lack of education,
- Deeply concerned that, in recent years, millions of homeowners have been affected by foreclosures and that high foreclosure rates may have an impact on the enjoyment of the right to adequate housing, and equally concerned that, in recent years, there has been an increase in private housing rentals for the urban poor without a balanced framework to protect tenants and owners, and that rental options for the urban poor are still insufficient and inadequate,

<sup>1</sup> A/CONF.165/14.

<sup>2</sup> E/CN.4/Sub.2/2005/17, annex.

- Deeply concerned that any deterioration in the general housing situation disproportionately affects persons living in conditions of poverty, low-income earners, women, children, persons belonging to national or ethnic, religious and linguistic minorities and indigenous peoples, migrants, internally displaced persons, tenants, the elderly, persons with disabilities and other persons belonging to marginalized groups or persons belonging to groups in vulnerable situations, and that tenure insecurity per se might result in discrimination and further exclusion, particularly social and economic exclusion,
  - Reaffirming that everyone is entitled to the right to adequate housing as part of an adequate standard of living without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,
  - Recognizing that security of tenure enhances the enjoyment of the right to adequate housing and is significant to the enjoyment of many other economic, social, cultural, civil and political rights, and that all persons should possess a degree of security of tenure that guarantees legal protection against forced eviction, harassment and other threats,
  - Recognizing also the need to promote, protect and strengthen a variety of tenure forms, as part of mainstreaming human rights, in particular in urban development, including in housing and slum upgrading, urban planning, land management and land administration policies, to ensure social integration, with the full participation of all relevant stakeholders,
1. Welcomes the work of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, including the undertaking of country missions;
  2. Acknowledges with appreciation in particular the report of the Special Rapporteur on security of tenure for the urban poor<sup>3</sup> and the guiding principles on security of tenure for the urban poor as laid out therein, and encourages States to take these guidelines into account when planning and implementing measures to improve the security of tenure for the urban poor;

<sup>3</sup> A/HRC/25/54.

- OP2bis.** Reaffirms that States have the primary responsibility to ensure the full realization of all human rights and to endeavor to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of their available resources, with a view to progressively achieving the full realization of the right to housing as a component of the right to an adequate standard of living by all appropriate means, including in particular the adoption of legislative measures;
3. Calls upon States to give due consideration to the human right to adequate housing as a component of the right to an adequate standard of living and to issues related to universal access to decent and sustainable housing in the elaboration of the post-2015 development agenda;
  4. Decides to extend, for a period of three years, the mandate of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, as set out in Human Rights Council resolution 15/8 of 30 September 2010;
  5. Notes the work on the basic principles and guidelines on development-based evictions and displacement and the need to continue to work on them, including through consultations with States and other stakeholders;
  6. Requests the Secretary-General and the United Nations High Commissioner for Human Rights to provide all necessary assistance to the Special Rapporteur for the effective fulfilment of his or her mandate;
  7. Notes with appreciation the cooperation extended to date to the Special Rapporteur by different actors, and calls upon States:
    - (a) To continue to cooperate with the Special Rapporteur in the discharge of his or her mandate and to respond favourably to his or her requests for information and visits;
    - (b) To enter into a constructive dialogue with the Special Rapporteur with respect to the follow-up to and implementation of his or her recommendations;
  8. Decides to continue its consideration of this matter under the same agenda item.

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