



# General Assembly

Distr.: General  
17 July 2019

Original: English

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## Seventy-fourth session

Item 72 (b) of the preliminary list\*

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

### **Adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context**

#### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report 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, Leilani Farha, submitted pursuant to Human Rights Council resolutions [15/8](#) and [37/4](#).

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\* [A/74/50](#).



## **Report 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**

### *Summary*

The present report, the Special Rapporteur examines the issue of the right to housing of indigenous peoples. The Special Rapporteur finds that housing conditions for indigenous peoples around the world are overwhelmingly abhorrent and too often violate the right to adequate housing, depriving them of their right to live in security and dignity. The report contains guidance for States, indigenous authorities and other actors on how to ensure that their obligations under international human rights law regarding the right to housing are met in conformity with the United Nations Declaration on the Rights of Indigenous Peoples.

Indigenous peoples face significant barriers to their enjoyment of the right to housing compared with non-indigenous peoples. They are more likely to suffer inadequate housing and negative health outcomes as a result, they have disproportionately high rates of homelessness and they are extremely vulnerable to forced evictions, land-grabbing and the effects of climate change. When they defend their rights, they are often the targets of extreme violence.

In the present report, the Special Rapporteur asserts that the right to housing of indigenous peoples must be interpreted in a manner that recognizes the interdependence and indivisibility of the right to housing as articulated in international human rights law and the United Nations Declaration on the Rights of Indigenous Peoples. The meaning and application of the right to housing must therefore integrate the right to self-determination, the principle of free, prior and informed consent, the right to land, territories and resources, and access to justice. In the report, the Special Rapporteur asserts that the adequacy of housing must be defined and determined by indigenous peoples themselves. She also asserts that human rights claims framed using the Declaration will be strengthened if the accountability mechanisms and the legal obligations attached to the right to housing are deployed. She concludes with a set of recommendations to guide States, indigenous authorities and other actors in ensuring that indigenous peoples can live in peace, security and dignity and enjoy the right to adequate housing without discrimination.

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## I. Introduction

1. Indigenous peoples live in some of the most abhorrent housing conditions across the planet, including in some of the richest countries in the world. These conditions are often far worse than those of non-indigenous populations and fail to meet the fundamental requirements of the right to adequate housing, affording indigenous peoples neither security nor dignity (A/69/267, para. 10).<sup>1</sup> Many indigenous peoples are subjected to homelessness and its life-threatening conditions, to grossly inadequate housing that lacks even the most basic services, such as potable water and toilets, and to forced evictions and involuntary displacement – all egregious violations of the right to housing.

2. These violations affecting indigenous peoples are embedded in, and a consequence of, colonization, forced assimilation, past and present dispossession of their lands, territories and resources, and deeply rooted discrimination nurtured over centuries.<sup>2</sup> In many cases, the alienation and dispossession of indigenous peoples from their lands severs their spiritual and physical connection to the world and to their understanding of home, contributing to a complex condition of homelessness.

3. As a result of this fundamental disruption, increasing numbers of indigenous peoples are migrating to cities. Once there, they all too often have no other option but to live in informal settlements in severely substandard housing, living in precarity without secure tenure. In turn, indigenous peoples are often grossly overrepresented in homeless populations in urban centres and at increased risk of premature mortality.

4. The enjoyment by indigenous peoples of the right to adequate housing is deeply interconnected with their distinct relationship to their right to lands, territories and resources,<sup>3</sup> their cultural integrity and their ability to determine and develop their own priorities and strategies for development.<sup>4</sup> Indigenous peoples were intentionally alienated from their own cultures and deprived of access to resources, both of which are necessary for their enjoyment of the right to housing. They are rarely provided an opportunity to design and implement their own housing policies and programmes and are excluded from decision-making processes that have an impact on their right to adequate housing. Indigenous peoples are commonly subjected to discrimination in housing-related laws, policies and programmes and by housing providers, which compounds their marginalization and inadequate housing conditions.<sup>5</sup>

5. Indigenous peoples are at the forefront of almost all human rights struggles related to housing, be it land-grabbing, forced evictions and displacement, climate change or homelessness. In addressing this issue, the Special Rapporteur finds complementarity between the right to housing as articulated in international human

<sup>1</sup> See also United Nations Human Settlements Programme (UN-Habitat), *Indigenous Peoples' Right to Adequate Housing: A Global Overview* (Nairobi, 2005).

<sup>2</sup> On doctrines and policies developed to justify the taking of lands from indigenous peoples, see E/CN.4/Sub.2/2001/21 and E/C.19/2014/3.

<sup>3</sup> See, for example, the submissions of New Wind Association and Red Eclesial Panamazónica for the present report. See also United Nations Declaration on the Rights of Indigenous Peoples, art. 25; and Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization, art. 13.

<sup>4</sup> United Nations Declaration on the Rights of Indigenous Peoples, arts. 3 and 26. See also Indigenous and Tribal Peoples Convention, 1989 (No. 169), arts. 7 and 14.

<sup>5</sup> See the submissions of Centre for Social Justice of the Institute for Development Education and Learning and West Papua Interest Organization; A/HRC/36/46/Add.2 and A/HRC/21/47/Add.1; and Food and Agriculture Organization of the United Nations (FAO) and Unidad de Coordinación de Asuntos Indígenas del Ministerio Secretaría General de la Presidencia de Chile 2012, *Hacia Una Política Pertinente para el Desarrollo Integral de los Pueblos Indígenas* (Santiago, FAO, 2012).

rights law and the principles established under the United Nations Declaration on the Rights of Indigenous Peoples. The present report has been informed by primary and desk research and by submissions that were received from States and civil society organizations and are available on the website of the Special Rapporteur.<sup>6</sup>

## **II. Interdependence and indivisibility of the right to housing and the United Nations Declaration on the Rights of Indigenous Peoples**

6. The right to adequate housing can be enjoyed by indigenous peoples only if its articulation under article 11 (1) of the International Covenant on Economic, Social and Cultural Rights is understood as interdependent with and indivisible from the rights and legal principles set out in the United Nations Declaration on the Rights of Indigenous Peoples. The provisions of the Declaration are also better understood and applied when interpreted consistently with the right to housing in international human rights law.

7. Article 1 of the International Covenant on Economic, Social and Cultural Rights affirms that everyone has the right to self-determination and thus to freely determine their political status and pursue their economic, social and cultural development, a provision that is mirrored in article 3 of the United Nations Declaration on the Rights of Indigenous Peoples. Land rights, which are of critical importance to indigenous peoples and feature prominently in the Declaration, are also connected to the right to housing. In paragraph 7 of its general comment No. 4 (1991) on the right to adequate housing, the Committee on Economic, Social and Cultural Rights has stated that the right to housing encompasses much more than four walls and a roof and includes the right to a secure place to live in peace and dignity, including access to land as an entitlement. The right to housing prohibits forced evictions as a gross violation of human rights, in line with the Declaration, which prohibits the forced removal of indigenous peoples from their lands and requires free, prior and informed consent.

8. The Committee on Economic, Social and Cultural Rights has also outlined the characteristics of housing adequacy, which include security of tenure, access to services and infrastructure, affordability, habitability, accessibility, location and cultural adequacy. These elements will have particular relevance to indigenous peoples and communities if they are interpreted by indigenous peoples themselves in a manner that incorporates their lived histories, cultures and experiences. The right to housing is also fundamentally connected to other rights, such as the rights to non-discrimination and participation in public decision-making, which are core principles articulated in the United Nations Declaration on the Rights of Indigenous Peoples.

9. In several of its concluding observations, the Committee on Economic, Social and Cultural Rights has noted the poor housing conditions faced by indigenous peoples. In keeping with provisions in the Declaration as well as principles associated with the right to housing, the Committee has urged States to engage in meaningful consultations with indigenous peoples in order to address conditions of homelessness and inadequate housing.<sup>7</sup> In cases pertaining to the right to land and security of tenure, the Committee has expressed concern regarding the failure of States to consult indigenous people with a view to obtaining their free, prior and informed consent in respect of decision-making processes that could have an impact on their rights,

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<sup>6</sup> See [www.ohchr.org/EN/Issues/Housing/Pages/AdequateHousingIndigenous-Peoples.aspx](http://www.ohchr.org/EN/Issues/Housing/Pages/AdequateHousingIndigenous-Peoples.aspx).

<sup>7</sup> E/C.12/CAN/CO/6, E/C.12/NZL/CO/4 and E/C.12/AUS/CO/5.

including their right to an adequate standard of living.<sup>8</sup> Furthermore, the Committee on the Rights of the Child has urged States to consider the application of special measures in order to ensure that indigenous children have access to culturally appropriate services in the areas of health, nutrition, education, recreation and sports, social services, housing, sanitation and juvenile justice, and to assist parents and others responsible for the indigenous child with culturally appropriate material assistance and support programmes in the field of housing, which should be developed in partnership with indigenous peoples, including children.<sup>9</sup>

10. The right to housing of indigenous peoples – properly understood – is an important but often neglected aspect of the right to self-determination and of the pursuit of economic, social and cultural development. The right to housing under international human rights law is legally binding, requiring States and indigenous authorities to take steps to ensure the enjoyment of this right by all indigenous peoples. The implementation of the right to housing by States is monitored to ensure government accountability through the treaty body monitoring system. For these reasons, the right to housing could be used by indigenous peoples to ensure that their inalienable rights are protected and to maintain their just and rightful connections to the planet and their home, while contributing to better living conditions on the ground.

### III. Housing realities of indigenous peoples

#### A. Overarching conditions in rural and urban contexts

11. Indigenous peoples fare far worse than non-indigenous populations in terms of housing conditions in both rural and urban areas. Indigenous lands and territories tend to coincide with areas that are most disadvantaged in terms of access to infrastructure, including access to drinking water and sanitation, education and health services.<sup>10</sup> In many countries, conflicts over natural resources, encroachments<sup>11</sup> and the militarization of indigenous territories profoundly affect the security of indigenous peoples, with devastating effects on their housing security and well-being.<sup>12</sup> Pollution

<sup>8</sup> E/C.12/HND/CO/2, E/C.12/CRI/CO/5, E/C.12/PRY/CO/4, E/C.12/NPL/CO/3, E/C.12/GTM/CO/3, E/C.12/KHM/CO/1 and E/C.12/NAM/CO/1.

<sup>9</sup> See articles 6 and 27 of the Convention on the Rights of the Child and the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention, paras. 25 and 34.

<sup>10</sup> Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights, *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities*, report adopted by the Commission at its twenty-eighth ordinary session; Economic Commission for Latin America and the Caribbean (ECLAC), *Guaranteeing Indigenous People's Rights in Latin America: Progress in the Past Decade and Remaining Challenges – Summary* (Santiago, 2013); and Stefania Errico, *The Rights of Indigenous Peoples in Asia: Human Rights-based Overview of National Legal and Policy Frameworks against the Backdrop of Country Strategies for Development and Poverty Reduction* (Geneva, ILO, 2017).

<sup>11</sup> Submission of Amnesty International and [CRC/C/BRA/CO/2-4](#).

<sup>12</sup> See, for example, Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights, *Research and Information Visit to Kenya: 1–19 March 2010*, report adopted by the Commission at its fiftieth ordinary session; and ECLAC, *Guaranteeing Indigenous People's Rights in Latin America*.

and contamination caused by extractive activities carried out in or near indigenous territories represent further challenges.<sup>13</sup>

12. The Working Group on Indigenous Populations/Communities in Africa of the African Commission on Human and Peoples' Rights noted, for example, "the dearth of decent housing, potable water and toilets" in indigenous peoples' villages in the Congo.<sup>14</sup> In Canada, the 2016 census indicated that 19.4 per cent of Aboriginal people lived in a dwelling that needed major repairs, and 18.3 per cent lived in crowded housing.<sup>15</sup> In Mexico, a 2018 study showed that the country's housing deficit affected almost 80 per cent of the indigenous population, compared with the national average of 44.7 per cent. The same study indicated that 56.3 per cent of the indigenous population lacked access to basic housing services, as compared with 15.5 per cent of the non-indigenous population.<sup>16</sup> In Hawai'i, indigenous populations have almost twice the rate of overcrowding (15 per cent) compared with the broader population.<sup>17</sup>

13. Indigenous peoples are becoming increasingly urban. It is estimated that approximately 50 per cent of the indigenous population in Latin America live in urban areas, and indigenous peoples in Australia, Canada and New Zealand are also highly urbanized.<sup>18</sup> When migrating to urban centres, indigenous peoples tend to live in marginal areas, often in informal settlements, in substandard housing or, disproportionately, in homelessness.<sup>19</sup> In its concluding observations on the fifth periodic report of Australia (E/C.12/AUS/CO/5), the Committee on Economic, Social and Cultural Rights expressed concern regarding the high rate of homelessness in the indigenous population of the country. In Namibia, many indigenous people in urban areas live on the periphery of informal settlements, where food is scarce and poverty-related diseases, including tuberculosis, are common.<sup>20</sup> It has been estimated that 36 per cent of indigenous people living in urban areas in Latin America are confined to poor neighbourhoods (e.g. *favelas*, *villas miserias*), where they tend to live in extreme poverty and insecure and unhealthy conditions, with no piped water or

<sup>13</sup> Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights, *Extractive Industries, Land Rights and Indigenous Populations' / Communities' Rights*, report adopted by the Commission at its fifty-eighth ordinary session; Inter-American Commission on Human Rights, *Indigenous Peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extradition, Exploitation, and Development Activities* (2015); and [CERD/C/PRY/CO/4-6](#), [CRC/C/BRA/CO/2-4](#), [CERD/C/SUR/CO/13-15](#) and [CERD/C/USA/CO/7-9](#).

<sup>14</sup> Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights, *Mission to the Republic of Congo: 15–24 March 2010*, report adopted by the Commission at its forty-ninth ordinary session, p. 19.

<sup>15</sup> Statistics Canada, *Census in Brief: The Housing Conditions of Aboriginal People in Canada: Census of Population, 2016* (2017).

<sup>16</sup> Consejo Nacional de Evaluación de la Política de Desarrollo Social, *Estudio Diagnóstico del Derecho a la Vivienda Digna y Decorosa 2018* (Ciudad de México, 2018).

<sup>17</sup> Kristen Corey and others, *Housing Needs of Native Hawaiians: A Report from the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs* (United States of America, Department of Housing and Urban Development, 2017). **Error! Hyperlink reference not valid.**

<sup>18</sup> ECLAC, *Guaranteeing Indigenous People's Rights in Latin America*; Ryan Walker and Manuhua Barcham, "Indigenous-inclusive citizenship: the city and social housing in Canada, New Zealand, and Australia", *Environment and Planning A: Economy and Space*, vol. 42, No. 2 (February 2010).

<sup>19</sup> ECLAC, *Guaranteeing Indigenous People's Rights in Latin America*; UN-Habitat, *Indigenous Peoples' Right to Adequate Housing*; UN-Habitat, *Housing Indigenous Peoples in Cities: Policy Guide to Housing for Indigenous Peoples in Cities* (Nairobi, 2009); and the submissions of Native Women's Association of Canada.

<sup>20</sup> James Suzman, *An Assessment of the Status of the San in Namibia* (Windhoek, Legal Assistance Centre, 2001), p. 35; and Office of the Ombudsman, draft White Paper on the rights of indigenous peoples in Namibia, 2014, p. 28.

sanitation, and are exposed to natural disasters.<sup>21</sup> In Australia, indigenous peoples in the State of New South Wales represent 3 per cent of the overall population, but 20 per cent of the homeless population.<sup>22</sup>

## B. Reserves and reservations

14. During the time of European colonization, indigenous communities in Canada, the United States of America, New Zealand and Australia were forcibly relocated to reserves, reservations and land trusts designated by the colonial authorities for use by indigenous communities. Those lands were to be managed by the indigenous population, but the title to the lands remained with the national Government.<sup>23</sup> Although such reserves and reservations are found in some of the richest countries in the world, they are characterized by deplorable housing conditions.

15. In Canada, close to half of all First Nations people live on reserves, and more than 25 per cent of them live in overcrowded conditions, constituting approximately seven times the proportion of non-indigenous people nationally. More than 10,000 on-reserve homes in Canada are without indoor plumbing, and 25 per cent of reserves in Canada have substandard water or sewage systems.<sup>24</sup> In a country with more fresh water than anywhere else in the world, 75 per cent of the reserves in Canada have contaminated water, with communities such as Attawapiskat declaring a state of emergency because of toxic chemical levels in the water.<sup>25</sup>

16. In the United States, a study by the Department of Housing and Urban Development showed that 34 per cent of households on reservations had one or more physical problems, compared with only 7 per cent for other households. The study also found that severe overcrowding is much more prevalent on reservations.<sup>26</sup> In Australia, children who live on reserves have higher rates of respiratory, infectious and parasitic diseases, diseases of the skin and nutritional diseases, all attributable to poor housing conditions.<sup>27</sup>

## C. Deeply rooted discrimination

17. Indigenous peoples experience discrimination in all dimensions of the right to housing. This is an ongoing legacy of colonization, the dispossession of land, territories and resources, and marginalization and exclusion, which are based on inherently discriminatory notions of indigenous peoples.

18. The manifestations of housing discrimination are many. Beyond the containment of indigenous peoples on reserves and reservations and the forced eviction of indigenous peoples from their lands and territories, States – including local authorities – often deny indigenous peoples access to housing, related services

<sup>21</sup> World Bank, *Latinoamérica Indígena en el Siglo XXI* (Washington, D.C., 2015).

<sup>22</sup> See submission of New South Wales Aboriginal Land Council.

<sup>23</sup> This section is focused on the reserves and reservations system put in place during the time of European colonization and their continuing effects.

<sup>24</sup> *State of the World's Indigenous Peoples* (United Nations publication, Sales No. 09.VI.13), p. 25.

<sup>25</sup> Jorge Barrera, “Attawapiskat declares state of emergency over water quality”, CBC News, 9 July 2019.

<sup>26</sup> Nancy Pindus and others, *Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report from the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs – Executive Summary* (United States, Department of Housing and Urban Development, 2017).

<sup>27</sup> Elizabeth McDonald and others, “A case study of physical and social barriers to hygiene and child growth in remote Australian aboriginal communities”, *BMC Public Health*, vol. 9, No. 346 (2009).



and secure tenure as a result of discriminatory laws and practices, including biased approaches towards their ways of living and their livelihoods. Indigenous peoples also face discrimination in criminal justice systems when they are criminalized for trespassing or for terrorism for trying to protect their lands, or when they are subject to charges such as “usurpation” or illegal occupation for using and accessing their lands and resources (A/HRC/39/17).

19. In many instances, the non-recognition of indigenous peoples’ land rights, the withholding of land titles and the non-recognition of indigenous forms of land use, as in the case of nomadic and semi-nomadic people, is discriminatory in essence and effect, and it prevents indigenous peoples from enjoying their right to housing. In Chile, for example, indigenous peoples can avail themselves of the Government homeownership subsidy programme if they can provide proof of title to land, although the Government is aware that this requirement sometimes creates an impossible barrier for indigenous peoples (A/HRC/37/53/Add.1, para. 74).

20. In the urban context, indigenous peoples often face discrimination at the hands of housing providers, in particular in the private market, who may refuse to extend rental contracts on the basis of direct discrimination and discriminatory stereotypes. In the United States, according to a recent study conducted in New Mexico, Minnesota and Montana, Native Americans were subjected to adverse treatment 28 per cent of the time when they tried to rent a home in competition with a similarly qualified, non-indigenous white individual.<sup>28</sup> In Sydney, Australia, indigenous peoples cited discrimination by real estate agents and landlords as a key barrier to obtaining housing. Indigenous participants in a recent study said they had been falsely told that there were no rental properties available, and others submitted many applications for housing units, all of which were unsuccessful.<sup>29</sup>

#### D. Nomadic and semi-nomadic indigenous peoples

21. Indigenous pastoral and hunter-gatherer communities across the globe face significant challenges to their enjoyment of the right to adequate housing. The land occupied by such communities is in many cases deemed by States to be *terra nullius*, vacant or unused, and is thus particularly vulnerable to appropriation. Insecurity of tenure is coupled with discriminatory approaches to their traditional forms of land use, which are designated as “primitive”, “unproductive” or harmful to the environment. This often results in blatant violations of their rights to land in order to establish public or private developments, with profound consequences for their housing situation.<sup>30</sup> In many cases, they have been forced to live along roadsides or forest edges or to squat on other people’s farmland without access to water, sanitation or other services.<sup>31</sup>

22. Nomadic and semi-nomadic indigenous peoples have also been deprived of access to their traditional building materials and their traditional medicines.<sup>32</sup> Most of the areas occupied by pastoralists and hunter-gatherers are underdeveloped, with

<sup>28</sup> United States, Department of Housing and Urban Development, “HUD study shows more than one in four native American renters face discrimination”, 17 November 2003.

<sup>29</sup> Melanie J. Andersen and others, “There’s a housing crisis going on in Sydney for aboriginal people: focus group accounts of housing and perceived association with health”, *BMC Public Health*, vol. 16, No. 429 (2016).

<sup>30</sup> See Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples’ Rights, *Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities*; and Errico, *The Rights of Indigenous Peoples in Asia*.

<sup>31</sup> See submission of Amnesty International.

<sup>32</sup> See submission of Centre for Social Justice of the Institute for Development Education and Learning.

poor infrastructure and services.<sup>33</sup> Alternative models for the provision of essential services for nomadic and semi-nomadic peoples, including mobile teams, have not been explored sufficiently in collaboration with the communities concerned.

23. In many countries, the rights of indigenous peoples to forested land are not recognized, in law or in practice, with the result that indigenous peoples are regarded as illegal occupants or trespassers subject to fines and even imprisonment. Since the 2018 amendments to the Vacant, Fallow and Virgin Lands Management Law in Myanmar, for example, indigenous peoples have faced an enormous risk of becoming landless.

24. In some countries, including Ethiopia and the United Republic of Tanzania, “villagization” policies have forced nomadic indigenous peoples off their traditional routes and confined them to areas that often lack sufficient pastures, water supply and adequate housing and services.<sup>34</sup> An alarming trend has emerged whereby States are compelling nomadic indigenous peoples to move to urban camps, where they are often accommodated in culturally inappropriate standardized houses, and where they lack appropriate employment opportunities.

## E. Urban homelessness and criminalization

25. In keeping with the definition of “homelessness” developed by the Special Rapporteur (see [A/HRC/31/54](#)), indigenous homelessness should not be defined narrowly as lacking a place to live. Instead, it must be defined in a way that resonates with indigenous peoples and the multiple deprivations they experience, including the isolation of individuals, families and communities from their land, water, place, family, kin, each other, animals, cultures, languages and identities.

26. The experience of homelessness for indigenous peoples as the loss of their relationship with their territories and communities means that even when migrating to urban areas, many indigenous peoples make efforts to maintain that relationship, regularly returning to their territories and their communities.<sup>35</sup> Beyond causes specific to indigenous peoples, indigenous homelessness is also precipitated by other common factors, such as unaffordable housing, home foreclosures, family breakdown and violence and a lack of housing support services.<sup>36</sup>

27. In urban centres, indigenous people tend to be overrepresented among homeless populations, living in emergency shelters, in homeless encampments and on the streets. Where homeless services are available, they are often ill suited to indigenous peoples and may further entrench the trauma of homelessness by replicating patterns of colonial oppression because the services are often offered by the same religious institutions that were part of the colonial structures of subjugation, among other reasons ([A/HRC/31/54](#)).<sup>37</sup> As an egregious violation of the right to housing, homelessness has a profound impact on the enjoyment of a wide array of human rights, including the rights to health, life, culture and education. Those who are

<sup>33</sup> Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples’ Rights, *Report of the African Commission’s Working Group of Experts on Indigenous Populations/Communities*.

<sup>34</sup> Human Rights Watch, *‘Waiting Here for Death’: Displacement and ‘Villagization’ in Ethiopia’s Gambella Region* (2012); Tor A. Benjaminsen, Faustin P. Maganga and Jumanne Moshi Abdallah, “The Kilosa killings: political ecology of a farmer-herder conflict in Tanzania”, *Development and Change*, vol. 40, No. 3 (May 2009).

<sup>35</sup> UN-Habitat, *Vivienda para pueblos indígenas en ciudades capitales andinas: procesos de planificación y análisis de vivienda adecuada* (2014).

<sup>36</sup> Jessie A. Thistle, “Indigenous definition of homelessness in Canada”, 2017.

<sup>37</sup> *Ibid.*

homeless are at risk of dying prematurely and suffer from a wide range of health problems stemming from the physical and social conditions in which they live.

28. In the United States, for example, indigenous Hawai'ians (Kānaka Maoli) are overrepresented among the homeless population of Hawai'i. In 2015, indigenous Hawai'ians and other Pacific islanders accounted for only 10 per cent of the overall population, but for 39 per cent of the 7,620 people experiencing homelessness in Hawai'i.<sup>38</sup> These numbers continue to grow as the cost of living increases and tourism development forces them to leave their homelands.<sup>39</sup> In Canada, it has been estimated that more than two thirds of those experiencing homelessness in the city of Winnipeg are indigenous people, and yet they represent just 11 per cent of the population.<sup>40</sup>

29. In many jurisdictions, legislation is used to criminalize those who are homeless. Punitive measures such as fines or incarceration are imposed for activities related to basic survival, including eating and sleeping, in public places ([A/HRC/31/54](#)). Because indigenous people are overrepresented among homeless populations, this situation may lead to their increased presence in the criminal justice system, thus amplifying their marginalization. In the Australian context, a direct correlation between the incarceration of indigenous women and their high rates of homelessness and poverty has been shown. Upon release from prison, indigenous women easily fall back into homelessness, especially as they are provided with little post-release support.<sup>41</sup>

## F. Forced evictions and land-grabbing

30. According to general comment No. 7 (1997) on forced evictions of the Committee on Economic, Social and Cultural Rights, forced evictions are “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”. Forced evictions are understood as a gross violation of the right to housing under international human rights law. This is consistent with and complements article 10 of the United Nations Declaration on the Rights of Indigenous Peoples, in which it is stated that indigenous peoples shall not be forcibly removed from their lands or territories and that relocation shall not take place without their free, prior and informed consent.

31. Worldwide, indigenous peoples are subject to forced evictions and land-grabbing for the sake of resource extraction, agribusiness, nature conservation initiatives and development projects, including pipeline and dam construction. Such forced evictions are often undertaken in a climate of violence and harassment, without effective consultation, without the free, prior and informed consent of indigenous peoples and, in most cases, without just and fair compensation.<sup>42</sup> During evictions, indigenous women are often targets of violence, harassment and sexual assault.<sup>43</sup> In

<sup>38</sup> Corey and others, *Housing Needs of Native Hawaiians*.

<sup>39</sup> See submission of Nation of Hawai'i.

<sup>40</sup> See submission of End Homelessness Winnipeg.

<sup>41</sup> Australian Law Reform Commission, “Aboriginal and Torres Strait islander women”, in *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Final Report, No. 133 (Sydney, 2017). **Error! Hyperlink reference not valid.**

<sup>42</sup> See submissions of Housing and Land Rights Network, Survival International, Recherche Actions Concertées Pygmées, New Wind Association, Red Ecclesial Panamazónica, Negev Coexistence Forum for Civil Equality and Amnesty International for the present report. See communication No. UA NPL 3/2017.

<sup>43</sup> [A/HRC/39/17/Add.3](#), para. 95, [CEDAW/C/GTM/CO/8-9](#), para. 40, and [CCPR/C/BGD/CO/1](#), para. 17.

Bangladesh, for example, it has been reported that rape is in some cases used as a weapon to cause fear and force indigenous communities to leave their lands.<sup>44</sup>

32. Threats and acts of violence against indigenous peoples defending their rights to land and voicing opposition to projects that affect their territories have increased.<sup>45</sup> Reportedly, some 40 per cent of the land and environmental defenders killed in 2016 and 25 per cent of those killed in 2017 were indigenous.<sup>46</sup>

33. The non-recognition of the customary rights of indigenous peoples to land and the frequent lack of formal land title make them particularly vulnerable to forced evictions and land-grabbing.<sup>47</sup> They are often treated as “squatters”, “illegal residents” or “poachers”. In turn, indigenous peoples are seldom consulted regarding decisions that might affect their lands. Even in those cases where such land rights are recognized in law, the lack of effective implementation of the law obliges indigenous peoples to live in a state of profound insecurity (see [A/HRC/33/42/Add.1](#) and [A/HRC/39/17/Add.3](#)).

34. In India, for example, more than 41 per cent of the forest rights claims made under the Forest Rights Act have been rejected, in many cases reportedly on an arbitrary basis. As a result, an estimated 9 million forest dwellers are threatened with eviction following the order issued by the Supreme Court in February 2019.<sup>48</sup> Procedures for land demarcation and titling are too often excessively cumbersome for indigenous communities, owing to the costs and duration of the procedures and the proof required of claimants.<sup>49</sup>

35. In Botswana, the San people lived sustainably for centuries in what is now the Central Kalahari Game Reserve. In the past 20 years, however, they have experienced forced evictions and violence perpetrated by the State in the name of environmental conservation. Their homes have been burned to the ground, their schools and health centres have been closed and their water has been shut off. They are forbidden from entering their lands, which are now a park for tourists with a designated space for a functioning diamond mine. Indigenous groups all over the world experience this type of dispossession. As the Special Rapporteur on the rights of indigenous peoples has

<sup>44</sup> Internal Displacement Monitoring Centre, “Bangladesh: comprehensive response required to complex displacement crisis”, 19 January 2015.

<sup>45</sup> See submissions of Housing and Land Rights Network, Border Centre for Support and Consulting and Amnesty International and the joint submission by Word Rainforest Movement (WRM), Coordinadora Latinoamericana de Cine y Comunicación Indígena (CLACPI), Observatorio Petrolero Sur (OPSur), Servicio Paz y Justicia América Latina/Adolfo Pérez Esquivel, Premio Nobel de la Paz, III Misión Internacional de la Vía Campesina en Colombia and Observatorio Latinoamericano de Conflictos Ambientales (OLCA) for the present report. See also Committee of Experts on the Application of Conventions and Recommendations, general observation 2010/81 on the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of ILO, [A/HRC/39/17](#) and [A/HRC/34/52/Add.1](#).

<sup>46</sup> Global Witness, *At What Cost? Irresponsible Business and the Murder of Land and Environmental Defenders in 2017* (London, 2018).

<sup>47</sup> See [E/C.12/UGA/CO/1](#); communication Nos. JOL OTH 7/2019, JUA KEN 5/2018, JUA KEN 1/2018, TZA 1/2016 and KHM 6/2018.

<sup>48</sup> At the time of writing, the eviction order had been stayed by the court for four months. See submissions of Housing and Land Rights Network and Survival International for the present report.

<sup>49</sup> See, Perú, Defensoría del Pueblo, *Informe de Adjuntía N° 002-2018-DP/AMASPPI/PPI: El Largo Camino Hacia la Titulación de las Comunidades Campesinas y Nativas* (Lima, 2018); and Human Rights Commission of Malaysia, *Report of the National Inquiry into the Land Rights of Indigenous Peoples* (2013).

noted, nature conservation is not working for people or for wildlife, as houses are still being burned down, and people are being displaced violently.<sup>50</sup>

36. In many cases, forced evictions are not accompanied by a relocation or resettlement plan, and no provision is made for temporary accommodation or emergency health care, food or education (see [A/HRC/39/17/Add.3](#)). In 2017, for example, the Philippines permitted the forced eviction of 133 families without their free, prior and informed consent in the villages of Kakiduguen, Biyoy and Dine to allow for the expansion of mining activities by private actors.<sup>51</sup> In most cases, relocations are undertaken without such consent of the communities affected, in breach of international human rights standards.<sup>52</sup> Indigenous people are thus left with no alternative land, no means of subsistence and no access to their sacred sites, and their communities are dispersed, with disastrous consequences for their cultural and physical survival and the well-being of their members.<sup>53</sup> Compensation or alternative housing, when provided, is often inadequate, established on an individual basis, or not culturally appropriate. Alternative housing is frequently offered in areas that do not allow indigenous people to pursue their livelihoods or gain access to social services.

37. Forced evictions also disproportionately affect indigenous peoples in the urban context, as many indigenous people live in informal settlements without security of tenure or are unable to afford the rising costs of rental housing in cities around the world. Discriminatory practices on the part of housing providers may also heighten the risk of eviction for indigenous tenants.<sup>54</sup>

## G. Financialization of housing

38. In the past 10 years, financial actors have come to dominate the housing market. As a result, housing is now treated as a commodity, as a means of accumulating and growing wealth and often as security for financial instruments that are traded and sold on global markets. The effects of financialization include rapidly increasing housing costs, resulting in unaffordability, housing precarity and an increase in homelessness.

39. The financialization of housing affects urban indigenous communities in cities in both the North and the South. On the island of Phuket, a tourist destination in Thailand, the indigenous Chao Lay (known as “Sea Gypsies”), who have inhabited Rawai Beach for centuries, have faced violent attacks and forced evictions from private actors, including a company that plans to develop luxury villas and other tourist accommodation.<sup>55</sup>

40. In the most expensive cities in Australia, indigenous peoples are being forced to relocate to suburban or remote areas as rental and homeownership costs continue to increase. For example, in Redfern, an indigenous inner suburb of Sydney, “The Block” – a housing complex for which the first urban indigenous land rights claim was won – has now been earmarked for the development of a 24-storey building to

<sup>50</sup> John Vidal, “The tribes paying the brutal price of conservation”, *The Guardian*, 28 August 2016. **Error! Hyperlink reference not valid.**; see also [A/71/229](#).

<sup>51</sup> Communication No. AL PHL 1/2019.

<sup>52</sup> United Nations Declaration on the Rights of Indigenous Peoples, art. 10; Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 16.

<sup>53</sup> See Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples’ Rights, *Mission to the Republic of Congo*; see also submission of Amnesty International.

<sup>54</sup> UN-Habitat, *Indigenous Peoples’ Right to Adequate Housing*.

<sup>55</sup> Human Rights Watch, “Thailand: investigate attack on ‘sea gypsies’ – halt forced eviction, assess claims to Chao Lay ancestral land”, 13 February 2016. **Error! Hyperlink reference not valid.**

serve as for-profit student accommodation, despite strong disapproval from the local indigenous communities.<sup>56</sup>

## H. Climate change

41. Indigenous peoples rely heavily on the natural environment for their material and cultural existence. Thus, while indigenous peoples have contributed the least to the climate crisis, they are the ones most affected by it. They are now finding themselves on the front lines facing every disaster, from the melting of the glaciers in the Arctic, to the deforestation of the Amazon, to the rising sea swallowing islands in Oceania (see [A/HRC/36/46](#)).

42. Indigenous perspectives on climate change are often excluded from the global mainstream narrative, in which scientific and economic approaches are valued.<sup>57</sup> Some argue that the lack of value attributed to indigenous ideas and solutions for adaptation and mitigation and the imposition of non-indigenous solutions on indigenous communities represent a new era of “climate change-driven colonialism”.

43. In Kenya, the eviction of the Sengwer people from Embobut Forest in connection with the implementation of climate change mitigation measures has reportedly rendered 4,400 people homeless and has caused many members of the community to disperse.<sup>58</sup>

44. In its resolution [29/15](#), the Human Rights Council recognized that the effects of climate change are most acutely felt by those who are already vulnerable, including indigenous peoples. In addition, under the Paris Agreement States parties must respect, promote and consider the rights of indigenous peoples when taking action to address climate change. However, in the Special Rapporteur’s experience, little consideration is given to the human rights of indigenous peoples, in particular their rights to self-determination and to live in dignity and security, in the application of the Paris Agreement.<sup>59</sup>

## I. Indigenous women

45. The enjoyment by indigenous women of the right to housing is deeply connected with the conditions affecting their communities and is profoundly affected by the multiple and intersecting forms of discrimination that they suffer because of their gender, indigenous identity and socioeconomic status.

46. One of the most significant barriers to housing for indigenous women is community property frameworks embedded in patriarchal power structures. Those frameworks deny women their entitlements to land ([A/HRC/30/41](#), para. 17) and make it difficult for them to participate on an equal footing in decisions that affect their communities. In cases where indigenous communities are displaced from their lands, indigenous women are rarely compensated for the loss of their dwellings and the resources that had ensured their livelihoods, driving them into a situation of economic dependence and deeper poverty (*ibid.*, para. 16). In cases of separation or

<sup>56</sup> Megan Gorrey, “High-rise for 600 students approved for Redfern’s The Block”, *Sydney Morning Herald*, 5 March 2019.

<sup>57</sup> The Special Rapporteur welcomes in this context the establishment of the platform on indigenous peoples and local communities by the Conference of the Parties of the United Nations Framework Convention on Climate Change; see <https://unfccc.int/news/indigenous-peoples-obtain-stronger-voice-in-climate-action>.

<sup>58</sup> See submission of Amnesty International.

<sup>59</sup> In accordance with the Paris Agreement rule book.

divorce, indigenous women living on reserves may lose their rights to continue to live in the community and are often forced to leave the reserve to find housing elsewhere.<sup>60</sup> Many indigenous women wanting to leave violent relationships are prevented from doing so for lack of safe emergency shelters for them and their children.

47. Given the high rates of poverty among indigenous women, those who end up in cities may live in low-income, high-crime neighbourhoods and in unsafe conditions and are at increased risk of becoming homeless. Lacking secure, adequate housing, indigenous women often become the targets of further violence because of their gender and their indigenous identity.<sup>61</sup> This dramatic spiral of violence (lack of access to adequate housing, violence, homelessness and further violence, including homicide) has profound roots in the extreme social and economic marginalization of indigenous women and their communities. Living in inadequate housing and homelessness has been used by State authorities as a reason to apprehend indigenous children and place them in State care. In many countries, indigenous children are grossly overrepresented among children in care populations. In Australia, Aboriginal and Torres Strait children are 10 times more likely to grow up in out-of-home care than non-indigenous children.<sup>62</sup> In Canada, indigenous children make up 52.2 per cent of children in foster care, even though they account for only 7.7 per cent of the overall child population (under 14).<sup>63</sup>

#### **IV. Key guiding principles for the realization of the right to housing of indigenous peoples**

48. Despite coming from diverse cultural and political histories and realities, indigenous peoples across the world share common experiences with respect to housing that are distinct from those of non-indigenous populations. It is therefore possible to identify several key principles for the realization of the right to housing that, if adhered to by States, indigenous authorities, private actors and others, would form an effective foundation from which to ensure the right to adequate housing of indigenous peoples.

##### **1. Recognize indigenous peoples**

49. In order to enjoy the right to adequate housing, indigenous peoples must be recognized as such. Article 1 of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization provides a set of objective and subjective criteria to assist in the identification of indigenous peoples. Under article 1 (2) of the Convention, self-identification is regarded as a fundamental criterion, consistent with the right to self-determination.<sup>64</sup> This inclusive approach to the recognition of indigenous peoples must be adopted.<sup>65</sup>

<sup>60</sup> Bernard Duhaime and Josée-Anne Riverin, “Double discrimination and equality rights of indigenous women in Quebec”, *University of Miami Law Review*, vol. 65, No. 3 (2011).

<sup>61</sup> See Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (2019).

<sup>62</sup> See Secretariat of National Aboriginal and Islander Child Care and others, *Family Matters Report 2018*.

<sup>63</sup> See [www.sac-isc.gc.ca/eng/1541187352297/1541187392851](http://www.sac-isc.gc.ca/eng/1541187352297/1541187392851).

<sup>64</sup> See also United Nations Declaration on the Rights of Indigenous Peoples, art. 9 and 33, and American Declaration on the Rights of Indigenous Peoples, art. I.2.

<sup>65</sup> See ILO, International Labour Conference, ninety-eighth session, Committee of Experts on the Application of Conventions and Recommendations, Convention No. 169, Peru.

## 2. Recognize and provide redress for past wrongs

50. In order for indigenous peoples to enjoy the right to housing in contemporary times, States and other relevant actors must acknowledge past wrongs endured by indigenous peoples, including colonization, dispossession of lands and territories and forced displacement. Once those wrongs are acknowledged, effective redress mechanisms must be established in keeping with the provisions of the United Nations Declaration on the Rights of Indigenous Peoples.<sup>66</sup> Addressing ongoing manifestations of past harm, such as a lack of security of tenure, substandard housing conditions or changing laws and policies that result in discriminatory outcomes, represents an essential contribution in this regard.<sup>67</sup>

## 3. Recognize the rights of indigenous peoples to lands, territories and resources

51. Indigenous peoples' access to and control over their lands, territories and resources constitute a fundamental element of the realization of their right to adequate housing and therefore must be given legal recognition by States (A/HRC/7/16, paras. 45–48).<sup>68</sup> In order to ensure adequate housing for indigenous peoples, States, indigenous authorities and other actors must recognize the distinct spiritual and cultural relationship that indigenous peoples have with their lands and territories.<sup>69</sup> This recognition must extend even to those indigenous peoples who live in urban areas or in homelessness.

## 4. Guarantee self-determination, free, prior and informed consent and meaningful consultation

52. Free, prior and informed consent is one of the most important principles set forth in the United Nations Declaration on the Rights of Indigenous Peoples. It is the corollary to self-determination, imposing a duty on States to ensure that indigenous peoples can participate in decision-making and influence outcomes of decisions that affect them. In the Declaration, it is asserted that indigenous peoples have the right to participate in decision-making in matters that affect their rights, through representatives chosen by themselves and in accordance with their own procedures, and to be consulted<sup>70</sup> with a view to obtaining free, prior and informed consent before the adoption and implementation of any legislative or administrative measures that may affect them.<sup>71</sup>

53. The Declaration affirms that indigenous peoples have the right to be actively involved in developing and determining housing programmes and administering such

<sup>66</sup> The Special Rapporteur on the rights of indigenous peoples has rightly argued that the United Nations Declaration on the Rights of Indigenous Peoples in its entirety can be understood as fundamentally a remedial instrument; see A/HRC/9/9, para. 36.

<sup>67</sup> See also A/HRC/27/52, paras. 27 and 28.

<sup>68</sup> United Nations Declaration on the Rights of Indigenous Peoples, art. 26. See also Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 14; and American Declaration on the Rights of Indigenous Peoples, art. XXV. See also Committee on the Elimination of Racial Discrimination, general recommendation No. 23 (1997) on the rights of indigenous peoples.

<sup>69</sup> See for example, the submissions of End Homelessness Winnipeg, New Wind Association and Native Women's Organization of Canada.

<sup>70</sup> United Nations Declaration on the Rights of Indigenous Peoples, art. 18. See also Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 6(1)(b); American Declaration on the Rights of Indigenous Peoples, arts. XXI (2) and XXIII (1); and A/HRC/18/42, annex (Expert Mechanism advice No. 2 (2011)). See also Human Rights Committee, general comment No. 23 (1994) on the rights of minorities, para. 7.

<sup>71</sup> United Nations Declaration on the Rights of Indigenous Peoples, art. 19. See also Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 6; and American Declaration on the Rights of Indigenous Peoples, art. XXIII (2). See also A/HRC/39/62.



programmes through their own institutions.<sup>72</sup> In this connection, it is crucial that the State and indigenous peoples adopt measures to strengthen those institutions,<sup>73</sup> providing them with the means to finance their functions<sup>74</sup> and to ensure their accountability and inclusiveness.<sup>75</sup>

54. In line with international human rights principles, the Special Rapporteur has argued that in order for the right to housing to be realized, States and other actors must ensure the meaningful consultation and participation of vulnerable groups in the development and implementation of housing-related laws, policies and programmes. Understood in conjunction with the principles of self-determination and free, prior and informed consent, this requires that indigenous peoples be meaningfully consulted with respect to any housing-related law or measure that will affect them, such as a national housing strategy or action plan, with a view to obtaining their consent.

55. General comment No. 7 of the Committee on Economic, Social and Cultural Rights and the basic principles and guidelines on development-based evictions and displacement indicate that no eviction should take place without due process, which should include meaningful consultation with those affected. The United Nations Declaration on the Rights of Indigenous Peoples and the basic principles and guidelines underline that indigenous peoples shall not be forcibly removed from their lands or territories and that no relocation shall take place without their free, prior and informed consent. Furthermore, before relocation occurs, agreement must be reached on just and fair compensation, where possible with the option of return.

56. There is no one-size-fits-all model for effective and meaningful consultations with indigenous peoples (A/HRC/12/34, para. 37). Consultations are considered appropriate when the process of designing them involves the participation of indigenous peoples and when their decision-making processes are respected and their chosen representatives engaged. Such procedures should facilitate genuine dialogue between the parties and should be based on mutual respect, good faith and the sincere desire to reach agreement. Particular attention must be paid to ensuring the effective participation of indigenous women. When traditional institutions do not allow for such participation, special measures should be adopted.

## 5. Guarantee substantive equality and non-discrimination

57. In accordance with articles 2, 15 (2) and 21 of the United Nations Declaration on the Rights of Indigenous Peoples and articles 2 (2), 3 and 11 (1) of the International Covenant on Economic, Social and Cultural Rights, the right to adequate housing must be guaranteed to indigenous peoples and individuals without discrimination.<sup>76</sup> Under article 15 (2) of the Declaration, States are specifically required to take “effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society”. The Covenant commits States to ensuring that the right to an adequate standard of living, including housing, can be exercised without discrimination and that women and men and women enjoy equal rights to housing.

<sup>72</sup> United Nations Declaration on the Rights of Indigenous Peoples, art. 23.

<sup>73</sup> Ibid., arts. 5, 18, 20 and 34.

<sup>74</sup> Ibid., art. 4. See also A/73/176, para. 5.

<sup>75</sup> ILO, *Understanding the Indigenous and Tribal Peoples Convention, 1989 (No. 169): Handbook for ILO Tripartite Constituents* (Geneva, 2013). See also United Nations Declaration on the Rights of Indigenous Peoples, art. 34; and Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 8.2. See also A/HRC/30/41, paras. 38 and 78.

<sup>76</sup> See also Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 3.

58. Discrimination against indigenous peoples is deeply embedded in State structures, legal systems and laws and policies, with a flow-on effect to society at large. This is because those structures were created to administer indigenous populations without the engagement of indigenous peoples themselves. In order for housing laws and policies to be non-discriminatory, a new approach must be adopted by States that is based on a full understanding of the right of indigenous peoples to self-determination and their right to freely pursue their economic, social and cultural development, including by improving their housing conditions, in line with article 3 of the Declaration and article 1 of the Covenant. The particular housing needs and rights of indigenous people, including elders, women, young people, children and persons with disabilities, must be a priority.<sup>77</sup>

59. Indigenous women and girls often experience particular forms of violence, including household and sexual violence and even homicide, as a result of the intersection of their indigeneity, gender, socioeconomic and cultural status and their housing status. States must recognize the important role that access to adequate housing plays in preventing such violence. Under article 22 of the Declaration and article 3 of the Covenant, indigenous women and girls must enjoy full protection and guarantees against all forms of violence and discrimination, whether inside or outside their communities. States must meaningfully consult with indigenous women and girls to develop appropriate and responsive housing and related policies and laws on a priority basis.

## **6. Housing “adequacy” interpreted by and for indigenous peoples**

60. In its general comment No. 4, the Committee on Economic, Social and Cultural Rights identified key factors to be considered in determining whether housing is adequate, including: legal security of tenure; availability of services, materials, facilities and infrastructures, such as safe drinking water, energy for cooking, and sanitation; affordability; habitability; accessibility; location, in proximity to services such as health care, schools and employment options; and cultural adequacy.<sup>78</sup> In order for these factors to be meaningful for indigenous peoples, each should be defined and assessed by the peoples themselves.

61. The core aspects of adequacy should also be read in the light of international human rights standards relating to indigenous peoples. For example, in assessing location as a factor, attention should be paid to the availability of schools that provide education in indigenous languages and in a manner appropriate to their cultural methods of teaching and learning.<sup>79</sup> “Cultural adequacy” means that States and indigenous authorities must allow indigenous peoples to construct their own housing and must respect their traditional knowledge, designs, materials and architecture.<sup>80</sup>

62. Under international human rights law, States should respect those housing structures which an indigenous community deems to be adequate in the light of their own culture and traditions. Where serious and valid health and safety issues are identified by indigenous communities and the State, housing alternatives should be offered in consultation with the affected community in strict compliance with the

<sup>77</sup> United Nations Declaration on the Rights of Indigenous Peoples, art. 21.2.

<sup>78</sup> See also Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009) on the right of everyone to take part in cultural life, paras. 16, 36 and 37.

<sup>79</sup> United Nations Declaration on the Rights of Indigenous Peoples, art. 14. See also Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 27; and American Declaration on the Rights of Indigenous Peoples, art. XV.

<sup>80</sup> Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing, para. 8 (g).

provisions of the United Nations Declaration on the Rights of Indigenous Peoples and the right to housing under international human rights law.

**7. Provide the maximum of available resources towards the realization of the right to housing of indigenous peoples**

63. Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights provides greater specificity than the United Nations Declaration on the Rights of Indigenous Peoples with respect to the allocation of resources necessary to realize the right to housing. In that article, it is stipulated that each State party shall take measures “to the maximum of its available resources”, with a view to progressively achieving the full realization of the rights enshrined in the Covenant, including the right to adequate housing.

64. In keeping with the right to self-determination, autonomy and self-governance, indigenous peoples, their representatives and their institutions should have access to adequate financial resources to implement the right to housing and should be accorded the right to make their own decisions as to how those resources are spent. Indigenous authorities and communities should establish effective accountability and monitoring mechanisms to ensure that resources are allocated in a manner that is consistent with international human rights law and promotes equality between women and men.

**8. Ensure access to justice and effective remedies for right to housing claims**

65. States, indigenous authorities and national human rights institutions should address barriers to access to justice for indigenous peoples with respect to claims related to the right to housing. This will require justice systems, procedures and remedies in which due recognition is given to indigenous peoples’ laws, traditions, customs and land tenure systems.<sup>81</sup> It may also require the establishment of alternative indigenous justice systems based on human rights norms.

66. Access to justice must extend to claims related to the actions of third parties affecting housing for indigenous peoples, including national and multinational business enterprises and financial institutions, in accordance with the Guiding Principles on Business and Human Rights.

## **V. Claiming the right to housing: access to justice**

67. In accordance with article 40 of the United Nations Declaration on the Rights of Indigenous Peoples, indigenous peoples have the right to prompt, just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such decisions must give due consideration to the customs, traditions, rules and legal systems of indigenous peoples and to international human rights. According to article 27, States shall establish and implement, in conjunction with indigenous peoples concerned, “a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples’ laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources”. In summary, indigenous peoples have the right to the adjudication of their claims to the right to land and housing in a manner that respects their own laws and traditions and international human rights law.

68. There are many cases where indigenous peoples have used the judicial system to successfully claim access to and control over lands, territories and natural

<sup>81</sup> United Nations Declaration on the Rights of Indigenous Peoples, art. 27; see also Indigenous and Tribal Peoples Convention, 1989 (No. 169), arts. 12, 14, 16 and 18.

resources. For example, in the regional human rights system, the Inter-American Court of Human Rights has developed extensive jurisprudence on the land and property rights of indigenous peoples, beginning with the case *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*,<sup>82</sup> in which it affirmed that the close ties of indigenous peoples with their traditional territories and the natural resources therein associated with their culture must be safeguarded.<sup>83</sup> In the case *African Commission on Human and Peoples' Rights v. Republic of Kenya* (also known as the Ogiek case),<sup>84</sup> the African Court on Human and Peoples' Rights held that, by expelling the Ogiek community from their ancestral lands against their will without prior consultation and without respecting the conditions of expulsion in the interest of public need, the Government of Kenya had violated their right to land as guaranteed by several provisions of the African Charter on Human and Peoples' Rights.<sup>85</sup>

69. While access to justice for the right to housing is intimately linked to claims for the right to land and self-determination, the right to housing itself is not commonly claimed, nor is it invoked in land claims by indigenous peoples.

70. The right to housing may strengthen claims affirming, for example, the rights to land and self-determination, because it is a legally binding right that is set out in a number of treaties ratified by States. Invoking the right to housing allows claimants to draw on a rich body of jurisprudence that could support claims to land and self-determination under the United Nations Declaration on the Rights of Indigenous Peoples. In cases where indigenous people face forced evictions and dispossession, a right-to-housing claim provides them with legally enforceable standards that are consistent with provisions of the Declaration, such as the prohibition of relocation without free, prior and informed consent. The right to housing also provides indigenous peoples with an opportunity to make legal claims to the built structures on their lands, circumventing claims that the land is uninhabited and therefore open for appropriation. In the urban context, claims related to the right to housing will be crucial for indigenous peoples to secure access to adequate, affordable and secure housing.

71. Indigenous peoples face many barriers in access to justice, including prohibitive costs; linguistic barriers, reinforced in many cases by the absence of interpreters and translators of indigenous languages; a lack of legal assistance; discrimination; and mistrust in the justice system.<sup>86</sup> Moreover, judicial authorities, and even public defenders and private bar lawyers, may not have the requisite knowledge to properly represent indigenous peoples, especially with regard to customary law pertaining to rights to lands, territories and natural resources (CERD/C/ARG/CO/21-23, para. 29, and A/HRC/21/47/Add.2, para. 51).

72. In order to ensure that indigenous peoples have access to justice with respect to housing and land claims, States and indigenous authorities may have to create new mechanisms. Such solutions have emerged in the criminal justice context. For example, indigenous authorities and States are working together to develop indigenous courts to handle criminal sentencing in a manner that is sensitive to

<sup>82</sup> Inter-American Court of Human Rights, Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Series C, No. 79, Judgment, 31 August 2001.

<sup>83</sup> Inter-American Court of Human Rights, Case of the Yakye Axa Indigenous Community v. Paraguay, Series C, No. 125, Judgment, 17 June 2005, para. 137.

<sup>84</sup> African Court on Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v. Republic of Kenya*, Application No. 006/2012, Judgment, 26 May 2012.

<sup>85</sup> *Ibid.*, para. 209.

<sup>86</sup> See, for example, CERD/C/ARG/CO/21-23, para. 29, A/HRC/21/47/Add.2, para. 51, A/HRC/27/65, para. 20, and A/HRC/40/61, para. 45; and Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights, *Research and Information Visit to Kenya and Mission to the Republic of Congo*.

indigenous culture and tradition and that includes indigenous communities in the process. Examples can be found in the Gladue courts of Canada; the Rangatahi and Pasifika youth courts in New Zealand; and the Queensland Murri courts, New South Wales sentencing circles, South Australian Nunga courts and Victoria Koori courts in Australia. In Norway, the Inner Finnmark District Court is required under article 108 of the Constitution to protect the customs and identity of the Sami people in the legal process and to consider their customs and customary law in its decision-making.

## VI. Housing legislation, policies and strategies for indigenous peoples

73. While a growing number of States have adopted legislation under which the rights of indigenous peoples to land and natural resources are recognized, most States address their housing needs within housing policies and programmes aimed at the general population, through measures targeting populations living in poverty, and occasionally through special measures.<sup>87</sup> In some States, housing measures for indigenous peoples are included in the framework of human rights action plans, equality plans, national plans on indigenous peoples or national development plans.<sup>88</sup> Far less common are housing programmes for indigenous peoples that are developed and administered by indigenous peoples themselves, in line with article 23 of the United Nations Declaration on the Rights of Indigenous Peoples.

74. When addressing indigenous peoples' housing through general measures, there is a significant risk that the resulting interventions will not take into account the specific needs of indigenous peoples and will be carried out without due consultation and respect for their right to self-determination. This may result in culturally inadequate housing solutions for indigenous peoples, such as the use of inappropriate building materials and designs.<sup>89</sup> Generic housing programmes can also exclude indigenous peoples entirely. For example, indigenous peoples often cannot gain access to mortgage or credit schemes because they often do not have proof of individual land title or lack the resources necessary to secure a loan.<sup>90</sup>

75. The Special Rapporteur is aware of several culturally or environmentally respectful housing programmes carried out in collaboration with indigenous peoples. In Paraguay, after housing solutions for indigenous peoples were adopted that they deemed culturally inappropriate, a study was launched in 2017 in collaboration with indigenous peoples to identify the main characteristics of housing suitable for indigenous peoples to inform future solutions. The project was also designed to develop alternatives to traditional building materials that are no longer available.<sup>91</sup> A similar study was also conducted in Chile.<sup>92</sup> In Hawai'i, each county has been called upon to adopt ordinances allowing the exercise of indigenous Hawai'ian architectural practices, styles, customs, techniques and materials historically employed by native

<sup>87</sup> See submissions of Bolivia (Plurinational State of), Chile, Costa Rica and Honduras.

<sup>88</sup> See Mexico, Programa Nacional de los Pueblos Indígenas 2018–2024; Plurinational State of Bolivia, Economic and Social Development Plan 2016–2020 within the Framework of Integrated Development for Living Well; and Costa Rica, Política Nacional para una Sociedad Libre de Racismo, Discriminación Racial y Xenofobia, 2014–2025.

<sup>89</sup> See submission of Centre for Social Justice of the Institute for Development Education and Learning. See also [A/HRC/13/20/Add.4](#), para. 68.

<sup>90</sup> See FAO and Unidad de Coordinación de Asuntos Indígenas del Ministerio Secretaría General de la Presidencia de Chile, *Hacia Una Política Pertinente para el Desarrollo Integral de los Pueblos Indígenas*.

<sup>91</sup> Paraguay, Ministerio de Tecnologías de la Información y Comunicación, “Estudio sobre viviendas indígenas plantea desafíos a política pública habitacional”, 6 November 2017.

<sup>92</sup> See submission of Chile.

Hawai'ians.<sup>93</sup> In Mexico, the Special Rapporteur met an indigenous community living in an informal settlement in the Roma Norte district of Mexico City. Through a city programme and a process of expropriation, they had successfully worked to obtain title to the land they had been living on, and they had upgraded their settlement to a culturally appropriate multi-unit housing complex, including a sweat lodge, traditional murals and a medicine garden.

76. The Special Rapporteur underscores that housing programmes or strategies developed by State authorities should be guided by article 23 of the United Nations Declaration on the Rights of Indigenous Peoples, under which the active involvement of indigenous peoples is required in the development and implementation of such programmes, and should follow a rights-based approach, as outlined in her recent report (A/HRC/37/53).

## VII. Conclusions and recommendations

77. **In contemporary times, the indigenous struggle for human rights is deeply rooted in the concept of “home”. Understood from an indigenous perspective, this concept is not just about a built structure where one lives, but is about one’s place on the planet, defined through one’s lands, resources, identity and culture. Indigenous peoples the world over have been wrested from their homes: their identities, histories and cultures are denied, their lands are stolen, and they are stripped of their resources through land-grabbing and extractive industries. They are told where they can and cannot live. They are relocated to the least productive lands, and once there, they are denied the necessities of life, such as potable water and sanitation services. Although indigenous peoples have contributed the least to climate change, they are on the front lines bearing its devastating consequences. In cities, they experience discrimination, grossly inadequate housing and scandalous rates of street homelessness. At worst, housing laws, policies and programmes are completely blind to indigenous peoples’ histories, exacerbating their experiences of colonization, and at best they provide particularized programming that falls short of needs.**

78. **In the present report, the Special Rapporteur asserts that the right to housing can have profound meaning for indigenous peoples in their struggle to secure “home” as they define it. Under international human rights law, the right to housing is not understood narrowly as the right to four walls and a roof, but is instead interpreted broadly to mean the right to live in peace, security and dignity. The Rapporteur believes that because the right to housing is a legal obligation of all States set out in many treaties, it has the potential to be an effective tool in the human rights struggle in which indigenous peoples are engaged. For this to be the case, however, the broad definition of the right to housing must be interpreted and applied in a manner that is responsive to indigenous peoples’ experiences of housing and home.**

79. **The Special Rapporteur offers the following key recommendations that should be implemented in line with the principles outlined in the present report:**

(a) **A reorientation of the relationship between the State and indigenous peoples is needed in which past wrongs are recognized and a commitment is made to redress them in a spirit of mutual respect and partnership. States should recognize the right of indigenous peoples to self-determination and that indigenous peoples must be able to influence decisions that affect them in housing and related areas. Indigenous peoples must be meaningfully consulted with a**

<sup>93</sup> Hawai'i State Legislature, Senate Bill No. 1917 of 2007.

view to obtaining their free, prior and informed consent to all decisions made regarding housing policy, laws and programmes that may affect them;

(b) The indivisibility and interdependence of the United Nations Declaration on the Rights of Indigenous Peoples and the right to housing under international human rights law should inform all housing-related laws, policies and programmes that affect indigenous peoples;

(c) The Declaration should be incorporated into national legislation and given full effect. The right to housing should also be incorporated into national legislation, recognizing that it must be realized through progressive measures to the maximum of available resources;

(d) States should consider ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization;

(e) States should recognize that the ongoing legacy of colonialism is rooted in discrimination and that it has a direct impact on the enjoyment by indigenous peoples of the right to housing. In consultation with indigenous peoples, States should undergo a process of review and amend or repeal all housing-related laws, policies and programmes that have discriminatory effects. States should also take positive steps, in consultation with indigenous peoples, to combat housing-related discrimination, including in the private sector;

(f) States, courts, tribunals and national human rights institutions should:

(i) Recognize both individual and collective human rights claims to housing and land, territories and resources;

(ii) Interpret and apply domestic law in accordance with the Declaration and the right to adequate housing under international human rights law;

(iii) Ensure that indigenous peoples have access to informal and customary justice systems that are compliant with international human rights norms, as well as to formal justice and international human rights complaint mechanisms, including by ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;

(iv) Address all barriers to access to justice experienced by indigenous peoples, including those living in rural environments, in informal settlements or on reserves and reservations;

(g) States should work in consultation with indigenous peoples and with the assistance of national human rights institutions to establish judicial and quasi-judicial rights-claiming mechanisms that are based in indigenous laws, customs and traditions;

(h) In consultation with indigenous peoples, and through a process led by indigenous peoples, States and indigenous authorities should develop and adopt human rights-based housing strategies that respond to the specific rights, interests and needs of indigenous peoples, pursuant to the Special Rapporteur's report on that topic ([A/HRC/37/53](#)). States should ensure coordination of housing policies between central and local governments and indigenous authorities and their coherence with other policies, including those related to climate change mitigation and adaptation, the provision of water, sanitation, energy, health care and education and the protection of the environment;

(i) The adequacy of housing – in both rural and urban contexts – must be determined by indigenous peoples themselves. Housing laws, policies and programmes that entail forced sedentarization, villagization, urbanization or assimilation or contribute to the social disintegration of indigenous communities

should be abandoned. Creative mechanisms, such as mobile services, should be considered in order to ensure the adequacy of housing for nomadic and semi-nomadic indigenous peoples;

(j) States should, as a matter of priority, address the abhorrent housing conditions of indigenous peoples, whether they live on reserves or reservations, in rural or urban areas. This response should include the development, in consultation with indigenous peoples, of housing that is adequate as defined by indigenous peoples themselves and includes potable water, indoor plumbing where appropriate, sanitation services, health services, education and employment opportunities. Adequate resources should be provided to indigenous authorities and institutions for this purpose. Rights-based monitoring and accountability mechanisms should be established to ensure the progressive improvement of housing conditions;

(k) States should declare a moratorium on forced evictions affecting indigenous peoples. All such forced evictions should be suspended until national legislation governing eviction and resettlement has been adopted that is fully compliant with international human rights standards and that allows for recourse before independent judicial institutions. Prior to carrying out any evictions, States must ensure that all feasible alternatives are explored in consultation with the indigenous communities affected.<sup>94</sup> Indigenous peoples must not be rendered homeless as a result of evictions, nor should they be made vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State should take all appropriate measures, to the maximum of its available resources, to ensure access to adequate alternative housing, resettlement or access to productive land, as appropriate. States should also monitor and prevent forced evictions carried out by private persons or other third parties;

(l) Resettlement or relocation should take place only with the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.<sup>95</sup> If return is not possible, indigenous peoples should be provided with lands of equal quality and legal status;<sup>96</sup>

(m) States should prioritize the prevention and elimination of homelessness of indigenous peoples with a view to ending homelessness by 2030, as envisaged in target 11.1 of the Sustainable Development Goals. Measures to address those living in informal settlements and homeless encampments should also be prioritized. Indigenous peoples should be involved in the development and administration of programmes to prevent and eliminate homelessness and should be provided with resources to implement those programmes. Policies aimed at preventing and addressing homelessness among indigenous peoples should be tailored and respond to their specific cultural, historical, social and economic circumstances, and to the conflict and trauma incurred at the hands of past colonial governments, private actors, religious institutions, childcare and correctional service institutions, and their own communities or families;

(n) States should ensure access to culturally appropriate, community-based legal and support services for victims of domestic violence. Such services should be established in consultation with indigenous women and children;

<sup>94</sup> [A/HRC/4/18](#); see also Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 18.

<sup>95</sup> United Nations Declaration on the Rights of Indigenous Peoples, art. 10.

<sup>96</sup> Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 16; and [A/HRC/4/18](#), para. 60.



(o) States should recognize, including through the application of the Paris Agreement, that indigenous peoples are disproportionately affected by climate change and its effect on their housing and land, territories and resources. All mitigation and adaptation policies that affect indigenous peoples and their right to housing must be carried out in meaningful consultation with them;

(p) Private actors should exercise human rights due diligence and cooperate in good faith with indigenous peoples in order to obtain free, prior and informed consent before the commencement of any activities that may affect the rights of indigenous peoples to housing and to territories, land and resources. This basic principle applies regardless of whether the indigenous peoples concerned hold the official title to the land;

(q) National and international financial institutions should adopt safeguards to prevent violations of the right to housing of indigenous peoples. Indigenous peoples should also have access to independent and effective grievance and complaint mechanisms for business-related human rights abuses, in line with the Guiding Principles on Business and Human Rights.

80. The Special Rapporteur on the rights of indigenous peoples has endorsed the recommendations above.

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