



HRC40 Joint NGO Oral Statement Interactive Dialogue with the Special Rapporteur on the right to adequate housing 4 March 2019

This NGO Statement is supported by civil society organisations working on the right to adequate housing globally and in Nigeria, Serbia, Kenya, Canada, Indonesia and the US.

We welcome the report of the Special Rapporteur on the right to adequate housing, on access to justice, a critically important element of this right. We agree with her assessment that access to justice is about giving voice to the deprivation of dignity and enabling rights holders to challenge the underlying policy decisions that have created the conditions in which they live.

We welcome also her broad view of access to justice which includes protecting individuals from direct State interference, such as forced evictions, but also, ensuring that States can be held accountable in respect of their positive obligations, such as when they fail to adopt reasonable measures to upgrade informal settlements or eliminate homelessness. Such violations are too often declared to be non-justiciable by governments or courts, in violation of the rule of law and the requirement that all human rights be subject to effective remedies.

States must also address substantive barriers to access to justice, such as failures to protect the right to housing in the legal framework and the inadequate interpretation of such laws by the Courts and government decision-makers. The judiciary has a crucial role in interpreting and applying domestic law with a view to promoting human rights and ensuring compliance with the State's international human rights obligations. For example, Courts and adjudicators need to consider the systemic housing issues that are surfaced by individual claims and ensure that their decisions and remedies promote the right to housing by addressing those structural causes.

In many countries, lack of a right to counsel prevents tenants and homeowners from enjoying even the limited rights that they have. In the U.S., in some cities, more than 90% of tenants are unrepresented in evictions, while 90% of landlords have counsel. When New York City created a right to counsel for poor tenants, evictions plummeted.



Access to justice is also denied when States disregard and defy court orders. For example, in Kenya, the Sengwer Indigenous people have been forcibly evicted despite an injunction requiring government agencies not to interfere with the Sengwer's occupation and control of Embobut forest. Since the first injunction in 2013, the Kenya Forest Service has burned down an estimated 2,500 Sengwer homes.

We highlight also the importance of States' obligations to regulate private actors, to ensure that their actions do not undermine housing rights. For example, States must ensure that proposed developments by business actors do not displace existing residents, and provide needed affordable housing. In Indonesia, the government has failed to prevent conflict between business entities and residents over land and housing developments. Some business entities bring legal claims under defamation laws against residents to silence any opposition to their commercial interests.

We applaud the Special Rapporteur's focus on informal settlements in her reports. With a quarter of the world's urban population living in informal settlements, criminalization of self-help efforts to access basic services which are not provided by the State, and enforcement of vagrancy laws against urban poor, are grossly inconsistent with the right to adequate housing. In Lagos, Nigeria where an estimated 66% of the city's 23 million inhabitants live in informal settlements, government agencies regularly visit informal settlements to issue fines to slum dwellers for "structural deficiencies" of their homes and raid markets and informal settlements at night to arrest and charge any persons they catch "wandering without evident means of livelihood".

Criminalization also takes place in the Global North, with "sweeps" of homeless encampments and the criminalization of sleeping and self-sheltering in wealthy countries where there is nonetheless a critical lack of affordable housing.

Co-sponsoring civil society organisations:

Justice & Empowerment Initiatives (Nigeria)

A 11 - Initiative for Economic and Social Rights (Serbia)

Hakijamii (Kenya)

Rujak Center for Urban Studies (Indonesia)

National Law Centre on Homelessness and Poverty (USA)

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