

INFORMAL SETTLEMENTS & THE HUMAN RIGHT TO ADEQUATE HOUSING

“Grossly inadequate housing in informal settlements is one of the most pervasive violations of the human right to housing worldwide.” - Leilani Farha, Special Rapporteur on the Right to Adequate Housing [1]

The Right to Adequate Housing

- The Universal Declaration of Human Rights (UDHR), the foundational document of the international human rights system, affirms the right to adequate housing. [2]
- Under the International Covenant on Social, Economic and Cultural Rights (ICESCR), states have the duty to “recognize the **right** of everyone to an **adequate standard of living** for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”[3]
- The UN Special Rapporteur on Adequate housing describes this as “**the right to live in a home in peace, security, and dignity.**”[4]
- This is not merely a right to shelter.[5] The UN Committee on Economic, Social and Cultural Rights (CESCR), monitoring compliance with ICESCR, sets out seven essential components of adequate housing: **legal security of tenure; availability of services, materials, facilities, and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.**[6]

A Human Rights Approach to Informal Settlements

- An estimated 25% of the world’s urban population live in informal settlements, meaning that basic services are often denied.[7] Moreover, those living in informal settlements reside in areas that are not only prone to natural disasters, but also forced evictions.[8]
- However, people living in encampments have core rights to **not be displaced without consultation and an adequate alternative.**[9] According to CESCR, “all persons should possess a degree of **security of tenure** which guarantees legal protection against forced eviction, harassment and other threats.”[10] Forms of tenure include public and private rentals, cooperative housing, leases, owner occupations, emergency housing, and informal settlements.[11]
- Additionally, as set out by the Special Rapporteur Guidelines on Adequate Housing, in upgrading informal settlements, states should “**engage with their residents of informal settlements to build on their capacities, improve conditions and keep communities intact.**”[12]

Good Country Practices Surrounding Informal Settlements

- Finland is the sole country in Europe with a declining homeless population, due to the country's implementation of the Housing First Policy, which recognizes that people have an inherent right to adequate housing first and foremost, not only after they have solved other social or health issues.[13]
- South Africa, whose Constitution espouses the right to housing and requires legislative measures for its progressive realization,[14] has enacted the “Upgrading of Informal Settlements Programme” (UISP). This plan allows municipalities to apply for funding from provincial government to redevelop informal settlements and provide occupiers with infrastructure, security of tenure, and access to basic services.[15] South Africa also prevents eviction of those living in informal settlements unless an adequate alternative is provided.[16]
- Portugal has created several programs to ensure all informal settlements will be upgraded to meet the adequate standard of living by 2030.[17] This includes:
 - Promoting the socio-territorial integration of social housing neighborhoods and improving the living conditions of their residents.[18]
 - Providing direct financial support (for reimbursement of expenses related to immediate accommodation, rent, and reconstruction), building materials, and technical support.[19]
 - Guaranteeing access to adequate housing for people living in poor housing conditions. This operates via public financing and is based on financial grants to municipalities, private social solidarity institutions, and housing associations and cooperatives.[20]

United States Recommendations

- **Country Wide**
 - **Engage in broad public consultation on housing policy, including with people who have experienced housing insecurity. Develop a national housing strategy that prioritizes affordable housing solutions for those experiencing homelessness.**
 - **Through the department of Housing and Urban Development, create and distribute guidelines for implementing Housing First programs at the local level.**
- **States & Municipalities**
 - **Recognize the human right to housing through legislation.**
 - **Allocate federal funds to develop a housing strategy in consultation with residents from a cross-section of neighborhoods and people who have experienced housing insecurity.**
 - **Ensure people in homeless encampments are not displaced without being offered alternative housing.**
 - **Engage with residents of encampments to improve conditions and keep their communities intact.**
 - **Implement a Housing First approach which allows people to access housing without additional barriers and regardless of mental health or substance abuse issues.[21]**

Endnotes

- [1] Hum. Rts. Council, *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*, ¶ Guideline No.6 (34) U.N. Doc. A/HRC/43/43 (2019) citing CESCR Gen. Co. No. 7 ¶ 39.
- [2] Universal Declaration of Human Rights art. 25, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR] “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including... housing.”
- [3] ICESCR art. 11, adopted Dec. 16, 1966, 993 U.N.T.S. 3.
- [4] Hum. Rts. Council, *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*, ¶ Guideline No.6 (34) U.N. Doc. A/HRC/43/43 (2019) citing CESCR Gen. Co. No. 7 ¶ 3; See also Comm. on Econ., Soc., and Cultural Rts., General Comment No. 4: The Right to Adequate Housing, ¶ 8, U.N. Doc. E/1992/23 (Dec. 13, 1991) [hereinafter CESCR General Comment No. 4] (“Rather [the right to housing] should be seen as the right to live somewhere in security, peace and dignity.”)
- [5] CESCR General Comment No. 4 ¶ 7, U.N. Doc. E/1992/23 (Dec. 13, 1991) [hereinafter CESCR General Comment No. 4].
- [6] CESCR General Comment No. 4 at ¶ 8.
- [7] UN-Habitat, *Streets as Public Spaces and Drivers of Urban Prosperity* (2013).
- [8] Hum. Rts. Council, *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*, ¶ Guideline No.7 (39) U.N. Doc. A/HRC/43/43 (2019).
- [9] Comm. on Econ., Soc., and Cultural Rts. (“CESCR”), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), ¶ 8(a), U.N. Doc. CESCR/E/1992/23 (Dec. 13, 1991) [hereinafter CESCR General Comment No. 4].
- [10] *Id.* at ¶ 8(a).
- [11] *Id.* at ¶ 8(a).
- [12] Hum. Rts. Council, *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*, Guideline No.7 ¶ 41 U.N. Doc. A/HRC/43/43 (2019).
- [13] Mercy Law Resource Center, *Second Right to Housing Report: The Right to Housing in Comparative Perspective* (2018); See also *Housing First in Finland* (2017). <https://ysaatio.fi/en/housing-first-finland>.
- [14] S. Afr. Const., 1996 § 26(2).
- [15] South Africa: Upgrading Informal Settlements Program (UISP) §2.1 (2009).
- [16] *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street, Johannesburg v. City of Johannesburg and others* 2009 (3) SA 208 (CC) (S. Afr.).
- [17] *Informal Settlements and Human Rights*, Submission to the Questionnaire of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (May 2018) <https://www.ohchr.org/Documents/Issues/Housing/InformalSettlements/ProvedorJusticaPortugueseOmbudsman.pdf>.
- [18] *Id.* (citing New Resolution of Housing Policies, Resolution of the Counsel of Minister’s (No. 50-A/2018, of May 2).
- [19] *Id.*
- [20] *Id.*
- [21] Y-FOUNDATION, A HOME OF YOUR OWN: HOUSING FIRST AND ENDING HOMELESSNESS IN FINLAND, 15, (2017).