

THE HUMAN RIGHT TO HOUSING: PROTECTING TENANTS FROM FORCED EVICTIONS

“The practice of forced eviction constitutes a gross violation of human rights, in particular the right to adequate housing.” – Commission on Human Rights, Resolution 1933/77 [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]
- 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.**[5]

Security of Tenure

- Legal security of tenure is a fundamental aspect of the human right to adequate housing. Under CESCR, “all persons should possess a degree of security of tenure which guarantees **legal protection against forced eviction, harassment and other threats.**”[6]
- CESCR outlines many forms of tenure, including public and private rentals, cooperative housing, leases, owner occupations, emergency housing, and informal settlements.[7]
- The Special Rapporteur on Adequate Housing calls for regulating rentals and preserving security of tenure for tenants through rent caps, controls, or rent freezes when necessary.[8]

Forced Evictions

- The International human rights standards call on states to **prohibit forced evictions** and **prevent evictions** whenever it is possible.[9]
- CESCR defines forced evictions “as 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** that are compliant with international human rights law.”[10]
- Under CESCR, to protect residents from forced evictions, states should “take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.”[11] It further recommends the following measures to prevent forced eviction:
 1. an opportunity for **genuine consultation** with those affected;
 2. **adequate and reasonable notice** for all affected persons prior to the scheduled date of eviction;
 3. information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
 4. especially where groups of people are involved, government officials or their representatives to be present during an eviction;
 5. all persons carrying out the eviction to be properly identified;
 6. evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
 7. provision of **legal remedies**;
 8. provision, where possible, of **legal aid** to persons who are in need of it to seek redress from the courts.[12]

A Comparative Analysis of Tenant Protections

Tenant Protections	Finland	South Africa	United States
Constitution Includes Right to Housing	✓	✓	✗
Limitations on Rent Increases	✓	✓	✗
Tenant Can File a Counterclaim against Rent Collection	✓	✓	✗
Strict Regulations of Eviction	✓	✓	✗
Landlords Cannot Turn off Electricity or Change Locks	✗	✓	✗

Tenant Protections in Lisbon, Portugal

- The law specifically prohibits evictions of tenants in Lisbon, except for when the government can provide similar housing nearby.[13]
- It also created a mechanism for entire neighborhoods, as opposed to only individuals, to file complaints concerning housing quality and new projects.[14]

United States Recommendations

- Country Wide
 - Use a human rights framework to regularly monitor housing availability, addressing inequalities and unaffordability.
 - Engage in broad public consultation on housing policy, including with people who have experienced housing insecurity.
- States & Municipalities
 - Recognize the human right to housing through legislation.
 - Preserve security of tenure for tenants through rent caps, controls, or rent freezes when necessary.
 - Prohibit forced evictions.
 - States should enact “just cause” eviction ordinances, where renters can only be evicted for causes specifically stipulated in the ordinance, providing protection from landlords evicting tenants because they want to make a profit when rent rises.[15]
 - Require a minimum of 60 days’ notice for evictions.
 - Provide legal representation or court navigators to assist those facing eviction or foreclosure.
 - Ensure there is no rent deposit due in order to dispute an eviction.
 - Enact legislation which would prevent landowners from turning off electricity, changing the locks, or physically removing occupants or goods from the property.

Endnotes

- [1] *Prohibition on Forced Evictions*, The Commission on Human Rights, Resolution 1933/77 <https://www.ohchr.org/EN/Issues/LandandHR/Pages/ForcedEvictions.aspx>.
- [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 at ¶ 8.
- [6] *Id.* at ¶ 8(a).
- [7] *Id.*
- [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.6 U.N. Doc. A/HRC/43/43 (2019).
- [9] 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 U.N. Doc. A/HRC/43/43 (2019); *See also* Comm. on Econ., Soc., and Cultural Rts., General Comment No. 7: The Right to Adequate Housing, ¶ 15, U.N. Doc. E/1998/22 (May 20, 1997).
- [10] Comm. on Econ., Soc., and Cultural Rts., General Comment No. 7: The Right to Adequate Housing, ¶ 15, U.N. Doc. E/1998/22 (May 20, 1997) [hereinafter CESCR General Comment No. 7].
- [11] CESCR General Comment No. 4 at ¶ 8(a).
- [12] CESCR General Comment No. 7 at ¶ 15.
- [13] Portugal: Framework Law for Housing *Lei de Bases da Habitação* (83/2019) <https://dre.pt/dre/LinkAntigo?search=124392055>.
- [14] *Id.* at § 60(4).
- [15] Tristia Bauman and Michael Santos, *PROTECT TENANTS, PREVENT HOMELESSNESS*, National Law Center on Homelessness & Poverty, <https://homelesslaw.org/wp-content/uploads/2018/10/ProtectTenants2018.pdf>.