

Mandate of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

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Excellency,

I have the honour to address you in my capacity as 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, pursuant to Human Rights Council resolution 34/9.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the **persons living in homelessness in the Netherlands**.

According to the information received:

In 2018, 39,300 persons were living in homelessness in the Netherlands according to official data. This number has more than doubled since 2009, when Government estimates indicated 17,800 persons were living in homelessness.

Most homeless persons in the Netherlands are men (84%), and over half have a "migration background". Homelessness has especially grown among young persons: while in 2009 only 17% were under the age of 30, now one in every three persons in homelessness is within that age group.

Undocumented migrants are particularly vulnerable to homelessness, and civil society organizations consider that the number of those who do not have access to housing is on the rise, despite the absence of any official data.

Another group of persons in homelessness that is also growing are those considered "self-reliant homeless". These persons tend to be employed, and fall in homelessness as a result of a life-changing event and/or lack of access to affordable housing. The shelter system mostly caters to those persons with psycho-social disabilities, excluding this group of persons who have no access to housing but are considered less vulnerable and "self-reliant", and therefore expected to get out of homelessness unsupported, by their own means.

Around 55,000 persons use recreational parks (camping sites, trailer parks) as permanent accommodation, even though it is not legally permitted. Most are in situations of extreme social vulnerability and resort to this type of accommodation due to their lack of access to adequate housing.

The annual mortality rate is much higher (0.7-1% between 2009 and 2016) among persons living in homelessness than in the general population: 0.2%. Independent research conducted in Rotterdam showed that life expectancy is reduced by 16 years for women in homelessness and 14 years for men in homelessness.¹

Government data shows that 24% of persons living in homelessness were employed in the five years before becoming homeless; the majority of others were in receipt of state-provided social assistance as their main income in the same period. In 2015, the Government decreased social assistance benefits to persons sharing a home and, as a result, many parents have asked their adult children to leave their homes. It is suggested that this reduction may have contributed to rising rates of homelessness, especially among the youth.

Though the number of evictions from social housing units has decreased in recent years from 6,980 evictions in 2013 to 3,700 evictions in 2017 (85% are carried out due to the failure to pay rent), it is believed that many evictions lead to homelessness. In 2013, for example, 17% of persons who suffered an eviction ended up in a shelter.² There is no reliable data for the total number of evictions in both public and private housing.

Several provisions in national and local legislation can disproportionately impact persons living in homelessness, which can result in their criminalization. Since 2010, squatting, something that was traditionally tolerated, is punishable with imprisonment of up to one year (article 429 of the Dutch Criminal code). ‘Causing noise that can disturb sleep’ is also a criminal offense in the Netherlands, which can result in fines (article 431). Being in a state of “obvious drunkenness” on the street is also criminalized and can lead to imprisonment of up to 12 days (article 453). The city of Amsterdam also bans behaviors specifically associated with homeless persons such as sleeping in the street. The Amsterdam city ordinance further prohibits the mere “leaning against a door, or window” or “to remain in the vicinity of a building or to stay in common areas of a building without any reasonable purpose”. Begging is also prohibited by Amsterdam’s ordinance, even though it does not constitute a crime in the Dutch Criminal Code.

The Government of the Netherlands has four main strategies and programmes related to homelessness: the 2018-2021 National Housing Agenda, the 2018 Multi-Annual Strategy For Protected Housing And Shelter, the 2019-2021 Homeless Youth Action Plan, the 2017 Home Again Action Programme. According to a study of the European Commission, the impact of those efforts is generally not strongly monitored, and the Government lacks indicators and a centralized collection of data that could assess their success. So far, only

¹ Nusselder , Slockers, Krol, Slockers, Looman, van Beeck, Mortality and Life Expectancy in Homeless Men and Women in Rotterdam: 2001–2010, PLOS ONE, 2013.

² European Commission, ESPN Thematic Report on National Strategies to fight homelessness and housing exclusion, Country Report Netherlands, 2019, p. 18.

14 municipalities have signed up to participate in the pilot Homeless Youth Action Plan.

Even though public housing falls under the competence of the Ministry of the Interior and Kingdom Relations, and social assistance, income security, accommodation security are the responsibility of the Ministry of Social Affairs and Employment, homelessness policy is under the direction of the Minister of Health, Welfare and Sport, and coordinated at the municipal level by local health departments. This sometimes results in lack of coordination and in policies that are primarily health-focused instead of addressing structural causes of homelessness.

While I do not wish to prejudge the accuracy of the information made available to me, I wish to express my serious concern about these allegations of multiple violations of human rights, contrary to international human rights law. The sharp increase in the number of persons living in homelessness is an indication that the right to adequate housing is not being effectively implemented. In light of the direct relationship between homelessness and otherwise preventable disease and illness and premature mortality, this would indicate that the Government's obligations with respect to the right to health and the right to life are not being met. The removal of persons living in homelessness from public spaces by force, without providing sufficient short and long-term accommodation, and subjecting them to fines or imprisonment, would constitute violations of the prohibition of cruel, inhuman or degrading treatment. The disproportionate impact of the above-mentioned violations on vulnerable groups, including migrants, young persons and persons with disabilities would also indicate violations of the rights to equality and non-discrimination.

I call on the Government to take immediate life-saving action to address the emergency situation of persons in homelessness. The imminent arrival of winter exacerbates the risks faced by thousands of persons in homelessness. Furthermore, according to international human rights bodies, States have an obligation to immediately implement measures to eliminate homelessness within broader rights-based housing strategies.³ Rights-based housing strategies must contain clear goals and timelines as well as set out the responsibilities of all levels of government and of other actors for the implementation of specific, time-bound measures, and must be supported by the necessary resources required for implementation. This process should involve consultation with, and participation by, persons living in homelessness.⁴

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

³ Please see my report on rights-based housing strategies: A/HRC/37/53.

⁴ Please see my report on homelessness and related State obligations: A/HRC/31/54.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain what urgent and/or short-term measures are in place to ensure access to adequate shelter and housing for persons who are currently homeless, including migrants and young persons. Please also indicate what measures you have in place to prevent the causes of homelessness.
3. Aside from the CBS (Netherlands statistic office) data which counts the number of individuals living in homelessness, what other data does the Government use to develop, implement, monitor and evaluate policies and strategies to prevent and solve homelessness? Can you provide an overview of data used to measure housing exclusion and risk of homelessness?
4. Please explain what measures are in place to provide access to basic shelter and other support services for persons who are homeless and deemed 'self-reliant'. Please explain the criteria to categorize persons in homelessness as 'self-reliant'?
5. By what date and through what measures do you anticipate eliminating homelessness as required by international human rights law and SDG Goal 11, Target 11.1?
6. Please provide details of measures to ensure evictions, including in recreational parks, do not lead to homelessness. Please provide the amount of evictions carried out in 2018 and 2019, in both social housing and the private sector.
7. Please provide information on any laws or regulations that allow people to be removed from public spaces against their will, or prohibit persons eating, cooking or sleeping in public spaces. Please clarify under which circumstances such laws or regulations impose fines or detention on persons who stay in a public space and whether such regulations also authorize the confiscation or destruction of personal belongings, including sleeping bags, tents or other materials used for shelter.
8. Please provide information on strategies to prevent stigmatization of persons living in homelessness.

9. Please indicate whether someone living in homelessness can claim the right to housing in court or through other human rights mechanisms.
10. Please indicate in what way the fulfilment of the right to housing plays an explicit role in developing, implementing, monitoring and evaluating housing policies and, specifically, policies and strategies addressing the structural causes of homelessness. Please indicate how policies and strategies under development will be rights-based.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

I intend to publicly express my concern for homelessness as a global human rights crisis in the near future as, in my view, the information available to me is sufficiently reliable to indicate a matter warranting immediate attention. Should I issue a press release, it will mention several countries as an example of the global homelessness crisis, and indicate that I have been in contact with the respective Governments to clarify the issues in question.

Homelessness is a human rights crisis of a global scale; I am also sending similar letters calling the attention of other Governments to the situation of homeless persons in their respective countries.

Please accept, Excellency, the assurances of my highest consideration.

Leilani Farha

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, and without prejudice to the accuracy of these allegations, I would like to draw the attention of your Excellency's Government to the relevant international norms and standards.

I wish to draw the attention of your Excellency's Government to its obligations under article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the Netherlands on 11 December 1978, which states that "[t]he States Parties to the present Covenant 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. The States Parties will take appropriate steps to ensure the realization of this right [...]." Pursuant to article 2.2 of the ICESCR, it is the obligation of States Parties to guarantee that the Covenant's rights will be exercised "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth *or other status* [emphasis added]." The Committee on Economic, Social and Cultural Rights has stressed in General Comment No. 4 that the right to adequate housing includes affordability, accessibility, and legal security of tenure.

The Committee on Economic, Social and Cultural Rights has previously recognized that a State party to the ICESCR in which a significant number of individuals are deprived of basic shelter and housing is, *prima facie*, failing to discharge its obligations under the Covenant. States parties are required to demonstrate that every effort has been made to use a maximum of available resources in an effort to discharge their obligations. Furthermore, I wish to direct your Excellency's Government to my report on homelessness and the right to adequate housing (A/HRC/31/54), in which I note that homelessness constitutes a serious violation of the right to adequate housing to which must respond to homelessness with the highest level of urgency. National and sub-national governments must immediately repeal any laws or measures that criminalize, impose fines on or restrict persons living in homelessness or behaviour associated with being homeless, such as sleeping or eating in public spaces. Governments also have an obligation to combat and prohibit any law or practice that serves to discriminate, stigmatize and negatively stereotype persons living in homelessness.

I also draw your attention to article 6 of the International Covenant on Civil and Political Rights, ratified by the Netherlands on 11 December 1978, which protects the right to life which is understood as "the supreme right from which no derogation is permitted" and, "the effective protection of which is the prerequisite for the enjoyment of all other human rights and the content of which can be informed by other human rights."⁵ The Human Rights Committee specifically states that "The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from

⁵ Human Rights Committee, General Comment No. 36 para. 2.

enjoying their right to life with dignity. These general conditions may include ... homelessness.” The Committee also states that the measures called for to address adequate conditions for protecting the right to life include, where necessary, “measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health care ...” [emphasis added].⁶ Violations of the right to life must be treated with the utmost seriousness and urgency. There is little doubt that homelessness triggers right to life interests.

I also call your attention to article 27.1 of the Convention on the Rights of the Child, ratified by the Netherlands on 6 February 1995, which states that “States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.” Article 27.3 states that “States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing, and housing.” It is widely acknowledged that inadequate housing has an adverse impact on the physical health, well-being and development of children. Any increase in the number of children living in homelessness is incompatible with the Convention.

I recall article 5(e)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by the Netherlands on 10 December 1971, which states that “States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: [...] the right to housing.”

I also recall General Comments No. 4, 7 and 20 of the Committee on Economic, Social and Cultural Rights, which stress the need to provide adequate legal protection from forced eviction, as well as to guarantee due process, alternative accommodation, and access to an effective remedy for those that may be affected by eviction orders. According to these General Comments, the Netherlands must explore all feasible alternatives to forced eviction in consultation with the affected persons. Moreover, demolitions must never lead to homelessness of evicted persons by ensuring there is provision of adequate alternative housing facilities, resettlement and compensation for lost property.

I note that through Agenda 2030 for Sustainable Development, the Government of the Netherlands has committed itself to eliminating homelessness. Target 11.1 requires all States to ensure access for everyone to adequate, safe, and affordable housing by 2030. This necessarily means eliminating homelessness by 2030. To this end, states must adopt rights-based housing strategies with the aim of eliminating homelessness by that date. I refer you to my report on human rights-based housing strategies (A/HRC/37/53) in which I identify ten key principles for the strategies’ effective development and implementation. According to these principles, States must ensure the political

⁶ Human Rights Committee, General Comment No. 36 para 26.

participation of persons living in homelessness in the design, implementation, and monitoring of rights-based housing strategies. Strategies should also work to combat stigmatization and discrimination against persons living in homelessness.

The full texts of the human rights instruments and standards recalled above are available at www.ohchr.org or can be provided upon request.