

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

REFERENCE:
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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 Nigeria**.

According to the information received:

At present, there is no official data collection on homelessness in Nigeria, impeding the development and implementation of effective policies to address the issue. Unofficial estimates indicate that there are between 24.4 million and 108 million persons living in homelessness.

According to Government officials and civil society organizations that I interviewed during my official visit to Nigeria in September 2019, homelessness is increasing in the country. This growth is largely due to rapid population growth (a rate of 3.2 per cent per year), rapid urbanization (a rate of roughly 4 per cent per year) and high levels of poverty that continue to grow. This situation is further exacerbated by mass forced evictions, insecure land tenure, discrimination in land ownership, poor and inadequate infrastructure, lack of basic urban services, insufficient resources, high costs of land and building materials, and the absence of an adequate legislative framework on housing. In 2018, the housing deficit in Nigeria was estimated to be of 22 million units in a total population of approximately 190 million people.

Although prohibited under international human rights law and binding on Nigeria, forced evictions have been practiced systematically for decades in the country, often using brutal force (including the lethal use of firearms, arson, arbitrary arrests and assault) resulting in deaths, and injuries, inflicting unimaginable trauma and suffering on the most vulnerable populations, including women and children. The systemic and sustained practice of forced evictions has left thousands of persons homeless in Nigeria.

The Lagos State Judiciary High Court held in 2017 that, in the absence of adequate notice or provision of alternative shelter, forced evictions violate the

fundamental right to dignity and constitute cruel and inhuman treatment contrary to section 34 of the Nigerian Constitution.

In 2012, the Government started the implementation of the National Housing Policy. Through the policy, the notion of mass housing was introduced for the purpose of providing homes for Nigerians irrespective of their financial status. The policy also introduced the concept of social housing, which was aimed at providing housing to low-income earners. However, the 2012 Housing Policy has not led to concrete improvements in the housing situation in Nigeria. The implementation of the policies has suffered from poor administration and inadequate funding.

Persons in homelessness suffer discrimination, stigma, criminalization and negative stereotyping in Nigeria. In Lagos, a police “task force” conducts “raids” and “mass arrests” of poor people found walking along in the streets. These people are put in trucks and delivered to a “mobile court”, where they are encouraged to plead guilty to the offence of “wandering without evident means of livelihood”, a defunct criminal offence, and forced to pay a fine of approximately 15,000 Naira (around 42 US\$D). The poorest, who cannot afford to pay the fine, can face imprisonment. Civil society organizations claim that “mobile courts” were in fact set up to exploit the homeless and the urban poor and scare them out of the city.

Vagrancy laws criminalizing the homeless and the poor were introduced in Nigeria during the British colonial regime, and abolished by the military junta in 1989, after a long campaign by the human rights movement: the 1989 Minor Offences (Miscellaneous Provisions) Act (CAP M16), Section 1, states that “(a). a person shall not be accused of or charged with (i) the offence of wandering (by whatever name it is called); or (ii) with any other offence by reason only of his being found wandering (by whatever name it is called), and, accordingly, that any person accused of or charged with such offence shall be released or discharged...”.

The capacity of homeless persons to seek remedies for the human rights violations they suffer is hindered by the right to housing not being fully justiciable in court, and also by the lack of legal aid that could assist them in protecting their rights.

Another concern is that no Government housing programme currently targets persons living in 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 complete absence of official data and the 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. Forced evictions without the provision of alternative shelter violate international human rights law and the prohibition of cruel and inhuman treatment found in article 34 of the Nigerian Constitution. 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, constitute violations of the prohibition of cruel, inhuman or degrading treatment. The disproportionate impact of the above-mentioned violations on vulnerable groups, including 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. Furthermore, according to international human rights bodies, States have an obligation to immediately implement measures to eliminate homelessness within broader rights-based housing strategies.¹ 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.²

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.

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 also indicate what measures you have in place to collect data on the number and situation of persons in homelessness. What data does the Government use to develop, implement, monitor and evaluate policies and strategies to prevent and solve homelessness?
3. 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.
4. Please also indicate what measures you have in place to prevent the causes of homelessness.

¹ Please see my report on rights-based housing strategies: A/HRC/37/53.

² Please see my report on homelessness and related State obligations: A/HRC/31/54.

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 do not lead to homelessness. Please provide the amount of evictions carried out in 2018 and 2019.
7. Please provide information on any laws or regulations, including vagrancy laws, that allow people to be removed from public spaces against their will, or prohibit persons eating, cooking, conducting small-scale informal economic activities (including “hawking”) or sleeping in public spaces. Please clarify under which circumstances such laws or regulations impose fines or detention on persons who stay or conduct their daily activities in a public space and whether such regulations also authorize the confiscation or destruction of merchandise, 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, including bias and prejudice among public officials and police forces.
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), acceded to by Nigeria on 29 July 1993, 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 acceded to by Nigeria on 29 July 1993, 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."³ 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

³ 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].⁴ 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 Nigeria on 19 April 1991, 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, acceded to by Nigeria on 16 October 1967, 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, Nigeria 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 Nigeria 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 participation of persons living in homelessness in the design, implementation, and monitoring of rights-based

⁴ Human Rights Committee, General Comment No. 36 para 26.

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.