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## Statement by Leilani Farha at the 40th session of the Human Rights Council, item 3

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

4 March 2019, Geneva

Mr. President,

Distinguished delegates, UN entities, representatives from civil society organizations, participants

I am honoured to address the Human Rights Council to present my report on access to justice for the right to adequate housing; as well as the reports on my country visits to the Republic of Korea and Egypt.

In my fifth year as Special Rapporteur, the numbers of people living in homelessness and in informal settlements is still increasing. Families are being driven out of unaffordable cities. Forced evictions continue unabated. With just over a decade remaining for States to realize their SDG commitment to ensure adequate housing for all, how do we turn this around?

In fact, there is a relatively simple answer: Treat the right to housing seriously *as a human right*.

That means being able to answer the question that I am so often asked by those living in homelessness and grossly inadequate housing: "Where do I go to claim my right to housing? Access to justice for the right to housing is inseparable from the right itself. Without access to justice, those deprived of the right to housing are not recognised as equal members of the human family. They are deprived of agency, unable to challenge the policy choices and decisions that create the conditions in which they live. They experience courts and tribunals as places where forced evictions are authorized and criminalizing sanctions imposed rather than as places in which their human rights can be claimed.

When I put to government officials the critical question of where people can go to claim the right to housing, they often assume, with some degree of panic, that I am asking if people can go to court and demand that they be provided with a house. That is not, however, what access to justice for the right to housing means. It does not mean putting courts in charge of housing programs. As with access to justice for other human rights, it means providing an adjudicative space in which rights holders can bring to light the effects of laws, policies or systemic neglect. The circumstances in which they live must be assessed against a normative framework of rights and obligations.

The normative framework for access to justice for the right to housing is well developed in international human rights law. Of the ten key principles identified in the report, let me highlight three:

**First**, denying access to justice cannot be justified on the basis that the right to housing is not considered justiciable within the State's domestic legal order. To do so is contrary to the Vienna Convention. Human rights must have remedies and accountability. States may decide that courts are not the best place to provide remedies for some components of the right to housing, relying instead on specialized tribunals or other independent mechanisms. *They cannot, however, deny access to justice altogether*, and they must provide ultimate recourse to courts where necessary.

**Second**, States cannot pick and choose which components of the right to housing will be subject to access to justice. Too often, I am told by State officials that they have provided access to justice for the right to housing, when in fact it only extends to some components, such as procedural protections from forced evictions or specific statutory entitlements. Access to justice must include means to hold governments accountable to the central obligation of progressive realization.

**And third**, States must recognize that international human rights law applies to all branches of government, including the judicial branch. As the guardian of rights, the judicial branch is independent of government but not of the State's obligations to respect, protect and fulfill the right to housing. Courts, tribunals and administrative decision-makers have a central role to play in interpreting and applying domestic law consistently with the obligation to ensure access to justice for the right to housing. Where the right to housing is not enumerated as an individual constitutional right, access to justice can still be provided by guaranteeing that other constitutional principles and human rights, such as dignity, and the right to life are equally applied to those who are living in homelessness or inadequate housing.

Access to justice for the right to housing does not, however, rely solely or even primarily on courts. Judicial processes must be complemented by other recourse mechanisms. In the context of displacement and potential eviction, my report proposes that access to justice be reconceived to ensure meaningful engagement and democratic participation throughout any upgrading or development processes. Alternatives must be identified that are consistent with the right to housing and implemented under the direction of affected communities. Recourse to courts may only be necessary when such processes have not been adequately implemented.

The report also describes the important role to be played by national human rights institutions and by informal and customary justice systems that are more accessible and less threatening than formal justice systems, and often able to resolve issues through rights-informed mediation and community-based adjudication. The distinctive requirements for access to justice for the right to housing of women, Indigenous peoples, children, migrants, persons with disabilities and other groups must be recognized, drawing on the important work that has been done by treaty bodies in these areas.

I am particularly concerned by the lack of attention to the right to housing in the business and human rights context, where the “third pillar” of Ruggie Principles the obligation to ensure access to effective remedies is critical. No private investment or development should be permitted without ensuring access to justice for those living in affected communities. Access to justice in this context must also be reconceived, providing not only reparation for harms, but preventing harms from occurring in the first place, and ensuring that development and investment is compatible with, and does not undermine, the progressive realization of the right to housing.

Honourable delegates, the normative framework for the obligation to ensure access to justice for the right to housing is clear. It is no longer optional or debatable. States cannot hold themselves up as leaders in human rights while leaving increasing numbers of residents to live and die on their streets, with no means to hold their Governments accountable. The time for excuses and debates, for looking the other way when access to justice is denied for the right to housing has long passed. We can not afford to affirm housing as a human right without really meaning it.

#### **Republic of Korea**

##### **Let me now turn to the country visit report on the Republic of Korea.**

It must be noted that significant progress has been with respect to the realization of the right to housing in the last 50 years and South Korea now has the largest social housing program in the world.

Yet, more than 300,000 low-income households continue to live in substandard housing like Goshiwon and Jjokbang. These conditions are tantamount to homelessness and I urge the Government to address them on an urgent basis.

I welcome the Government’s paradigm shift away from large scale redevelopment towards small-scale urban renewal projects. I urge the government to revise ongoing projects in line with international human rights standards.

For the first time in my tenure as Rapporteur, I met with a National Pension fund, to discuss global investments and their impact on the right to housing. It was a critical conversation that I hope will be ongoing. The city of Seoul’s should be noted for its commitment to The Shift – the global movement to reclaim the right to housing - and their innovative human rights recourse mechanism. Since my visit the Government has implemented some of my recommended reforms, and I am confident that they will continue to do so.

#### **Egypt**

Turning to my second mission, I was honoured to be invited to Egypt, and to be the 1st Rapporteur to conduct a mission there in 9 years.

Egypt too has made significant progress with respect to the progressive realization of the right to housing, including:

- constructing 600,000 units since 2014,
- developing an innovative social housing homeownership programme
- and providing access to water to 94 per cent of all households

In light of the country’s population size and resource base, these are considerable accomplishments. I am however concerned that:

- the New Cities, being built on desert land have millions of vacant units, despite overcrowding in central urban areas.
- Approximately that many of the 38 million people living in informal settlements and unplanned areas lack security of tenure and access to necessary services. I wasn’t informed of any clear plan to address these circumstances.
- Vulnerable groups including women, children in street situations, Coptic minorities, and Nubians, face discrimination in respect to the right to housing. I am particularly concerned about discrimination against the LGBTQ community in this regard.

I am troubled that right to housing concerns raised in my report will not be fully addressed if residents cannot freely express their concerns. This leads me to the most troubling aspect of the visit.

During and after my visit, I received information alleging that several people had experienced some form of intimidation or reprisal in relation to my visit.

As Special Rapporteur and as a human rights defender myself, it was difficult to learn that my visit may have exposed those with whom I spoke to harm. It has left me with a deep heaviness.

#### **Delegates**

It is essential that all of the interlocutors we as Independent experts appointed by the Council rely on to help inform our assessments are not subject to reprisals. This is a fundamental principle in international human rights law and processes.

Looking forward, I am pleased to be visiting France and Nigeria this year and I thank the Council for its ongoing support of the mandate. I am happy to answer any questions you may have.

Thank you.

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