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STATEMENTS

[Statement by Ms. Leilani Farha, Special Rapporteur on Adequate Housing as a component of the right to and Adequate standard of living, and on the right to non-discrimination in this context at the 69th session of the General Assembly - Third Committee, Item 68 \(b & c\)](#)

Ms Leilani Farha

Santiago de Chile, 28 April 2017

I would like to thank the Government of Chile for its invitation and openness to sharing information and discussing a range of issues related to the right to housing. I met with government officials at all levels and have had constructive and substantive conversations. I would also like to thank the National Human Rights Institution, the Supreme Court, the Chilean Chamber of Construction, civil society, grassroots and community organisations, advocates, lawyers and researchers who devoted time and effort to meet with me to help me better understand housing in the Chilean context, with a special thanks to those who travelled from places that I was unable to visit. I am deeply grateful to the residents including those in *campamentos* who generously invited me into their homes and organisations, and who were courageous in their sharing of personal experiences.

My statement today constitutes initial impressions and recommendations, which I hope will contribute to an ongoing constructive dialogue regarding the implementation of the right to adequate housing in Chile. My final report, which will be presented to the Human Rights Council at its 37th session in March 2018, in Geneva, will cover a broader range of issues.

1. Introduction

In my assessment there are two central characteristics that define Chile's housing system: its private market, homeownership focused approach, and resulting segregation of particular vulnerable groups. These two characteristics are interrelated and are not reducing inequalities.

Chile is known as one of the most financialized and privatized economies in the region. This can be traced back to the introduction of free-market neo-liberalism during the military dictatorship (1973 to 1990). Chile's

economy continues to be based on this economic model, particularly the housing construction sector which represents 3.2% of the country's GDP. Simply put, every aspect of the housing system including for the lowest income groups used to be based on the absence of the State as anything more than a financier, with the most part housing viewed only as an asset or commodity. Although there have been some changes in the last fifteen years, the main actors, private real estate builders and developers remain powerful and this model has converted rights holders into consumers.

This dominant paradigm is reflected structurally in the Constitution with its focus on property rights, and is also expressed through housing subsidies, laws pertaining to rental accommodation, and even to the treatment of indigenous peoples, migrants, older persons, female headed households and those who are homeless.

The quantitative focus of Chile's housing policy has resulted in positive change, with large segments of the population becoming homeowners with security of tenure that can be passed on to their children, however it has had deleterious qualitative results for many. Vulnerable groups lacking the financial resources to compete in the market, in large part have been physically expelled from city centres: isolated, marginalized and stigmatized because of their poverty, often living in grossly inadequate housing.

2. Some positive developments

Though economic and social rights remain subsidiary to civil and political rights in Chile's legal landscape, I was pleased to learn of the establishment of the Office of the Under-Secretary for Human Rights within the Ministry of Justice, whose job it is to promote and coordinate public policies in the area of human rights. The Under-Secretary is in the midst of developing the first national human rights plan, which no doubt will play an essential role in the years to come. Chile also has an independent National Human Rights Institute which carries out important research regarding the right to housing and promotes social and economic rights, including the right to adequate housing, in its work.

The tremendous results that Chile has reached in the housing sector in the last 40 years must not be under-emphasized, in particular taking into account the more inclusive aspects developed in the programmes over the last 15 years. Having poured billions of dollars into the housing sector, Chile has successfully managed to address a significant portion of its quantitative housing deficit. This is a considerable achievement and Chile now boasts a 64% homeownership rate. Nevertheless, there remains a qualitative deficit of over 1.2 million houses in need of expansion, access to sanitation or improvement and maintenance.

It should also be recognized that the Government has responded to some of the weaknesses of the homeownership subsidy for vulnerable groups. For example, I learned of a subsidy program aimed at integrating poor people in prime city centre locations; a requirement that newly constructed buildings reserve 20% of units for social housing subsidies, and a new subsidy to promote rental accommodation as a stepping stone to homeownership. The government has also taken some efforts to ensure that subsidized housing is of better quality and that larger units are available.

3. Main areas of concern

a. Housing subsidies

Chile's current housing system continues to be based on a model that was developed during the military dictatorship. It is essentially a demand-based homeownership system. Residents, including those who are poor, apply for a unit – the size and quality of which is based on the applicants' income level – paying a portion of its cost with personal savings (on average 400USD for those in the lowest income bracket). The government then covers the difference in the form of a subsidy, which represents as much as 95% of the total cost of the unit. Middle class applicants require larger savings and a mortgage to help finance the cost of the unit, and the State pays a smaller subsidy. Private builders are contracted to build the units. Once granted a unit, residents in the vulnerable groups make no further payments beyond utilities and become owners with security of

tenure

Because the private sector builders are profit motivated, they have not used good quality materials and have built on the cheapest land they can buy which tends to be well outside of city centres. This has resulted in the segregation of poor people to the outskirts of cities, dislocating them from their communities, their places of employment, and their identities as city-dwellers. Within cities, the drive for profitability has resulted in poor quality, excessively high-density high-rise buildings. "Vertical ghettos" as they have been coined, which house thousands of tenants in one massive structure represent unregulated and poor urban and social planning.

I was disheartened to hear (often first hand) that the housing subsidies – which banish poor people to the margins of cities – have contributed to the deep stigmatization of people living in poverty. I was told by many, including by government officials, that those with wealth do not want to live beside those who are poor. This deeply entrenched discrimination against them is a social problem that the government must tackle immediately through better urban planning, increased opportunities for participatory democracy, and public education schemes.

b. Real estate interests

The dominance of the real estate sector can be seen in many municipalities across the country.

In Cerro Barón in Valparaíso, I visited a community on the waterfront that is currently fighting a luxury condominium development. A landmark hospital was irregularly demolished to make way for the project, and residents in the vicinity have suffered damage to their structures, walls and homes as a result. I was told by the development agent that the smallest unit in the complex would sell for 150,000USD, completely unaffordable for most in Valparaíso, a city with a high poverty rate. The units are attracting wealthy people from Santiago as secondary residences.

In several cities of Chile, real estate appears to be profiting from lack of consistent regulations about land use. In some cases, builders have been given permits to erect skyscrapers, or luxury apartment complexes without any height or density restrictions, without consultation with local residents, and without consideration for the needs, or character of the community.

c. Homelessness

I am concerned by the visibility of street homelessness in Chile and its relative invisibility in terms of housing and social development policy.

Based on preliminary inquiries, there is no clarity on the numbers of homeless persons, though a study by the Ministry of Social Development from 2011 indicates that at that time there were 12,250 homeless persons. It appears to me that the structural causes of homelessness have not been thoroughly researched by the government. It also appears that there is currently no national policy or strategy to prevent, address or eliminate homelessness.

But for a small pilot project aimed at providing supportive housing to a group of chronically homeless people, homelessness is not treated with a sense of urgency, priority or as a human rights concern, with charities carrying the bulk of the responsibility without the capacity or the objective to offer long term housing options.

Chile's treatment of homeless persons is grossly inadequate in light of the severity of the lived experiences: they are a forgotten population. Chile's commitment to the 2030 Agenda for Sustainable Development, in particular to Goal 11. 1, should result in considerable efforts to address this significant violation of the right to housing.

d. Informal settlements

According to 2016 data, there are 660 informal settlements in Chile housing approximately 38,770 families or approximately 116,000 people. "Campamentos" as they are known, are present in most cities in Chile,

though Viña del Mar apparently has the greatest number. The number of families living in informal settlements has increased by 41% since 2011. Campamentos are often built on public or private lands, and technically are started as 'occupation' of that land by a group of households (currently 8 or more). Those living in campamentos are the poorest and most vulnerable. I was told that regularization (radicación o urbanización) of such settlements, when possible, can take from 5 to 15 years.

Many campamentos are made up of migrants who simply have nowhere else to live in light of the restrictions on migrants from receiving housing subsidies until they have resided in Chile for three years and become permanent residents. For example in Antofagasta 80% of a campamento population, I was told, was made up of migrants.

Beyond migrants, many people residing in these settlements had originally applied for subsidized housing, however due to long waits, and the poor location and quality of such units, and a lack of transportation into city centres, decided they would be better off living informally closer to their places of employment.

The living conditions in these settlements are characterized by a lack of security of tenure, overcrowding, and a lack of basic utilities including running water. A recent study showed that 15% of residents of campamentos live in areas of socio-natural risks, old landfill sites, contaminated areas and areas associated with floods and forest fires. Residents of campamentos told me that they are not granted an official address and as such are precluded from many social benefits.

Historically, campamentos were systematically dismantled and residents were relocated to city peripheries with subsidies. At the current time, however, where these settlements are located on public lands, it appears that generally governments do not engage in the practice of forced evictions. However, where residents occupy privately owned lands, they can be forced off the lands if the private landholder is unwilling to sell their property to the State and/or files an eviction order. There does not appear to be a relocation policy in place in such circumstances.

I was told of the forced eviction of approximately 300 people in Iquique, in August 2016 in the Barrio Renacer en Alto Hospicio, from private land. The testimonies reflected the trauma experienced by some of the residents of this community, including due to the fact that they were left without water, electricity, sewage or housing options in an eviction executed with strong presence of police and security forces. Furthermore, threats of a second eviction seem to be looming for this community, without clarity as to where they would be relocated.

e. Migrants

In recent years Chile has faced an estimated 200% increase in immigration, making it one of the regional migrant destinations¹ Migrants come from a number of countries notably, Bolivia, Colombia, Peru, Venezuela and Haiti.

Almost all migrants to Chile experience various forms of discrimination in the housing sector. Migrants cannot avail themselves of the housing subsidy program until they have resided in Chile for at least 3 years and have become permanent residents. This leaves them no option but to rent in the private market or reside in campamentos or on occupied lands/buildings. Discrimination in the private rental market is rampant. I heard many stories of migrants being denied accommodation because of their place of origin or exploited in the private housing market by landlords who overcharge. Within campamentos, migrants often experience intercultural violence and hostility.

Women migrants have a particularly difficult time, especially when they are not 'attached' to a man. Employment opportunities are scarce which means renting an apartment is almost impossible. Within campamentos, migrant women often experience violence and some may resort to prostitution to garner a living.

f. Indigenous Peoples

In his report on Chile, the Special Rapporteur on extreme poverty said the "rights of indigenous peoples are the Achilles' heel of the human rights

record of Chile." I agree. Chile continues lagging behind the region in its recognition of its intercultural characteristics, with indigenous peoples and their cultures and ways of living as a strength. Indigenous people—who are almost twice as likely to be poor than the average in Chile—face lower housing standards as a result of long-standing discriminatory policies and practices, the dispossession of their lands, and the lack of a rights-based indigenous policy that would begin to address their experiences of inequality.

My mission exposed that indigenous people suffer deleterious housing conditions including overcrowding, precarious tenure, and lack of access to water and discrimination. I was disturbed to learn that often indigenous peoples are relocated onto lands that are unsuitable for human habitation. I visited what used to be Vertedero Boyeco in Temuco where a massive garbage dump was located in the vicinity of several communities—creating a toxic environment for the residents and pollution.

I met with a number of representatives of the Mapuches, indigenous people who comprise 84% of the indigenous population in the country. Their current housing conditions are directly related to their having been expelled from and dispossessed of their traditional lands, to make way for the government-sponsored forestry industry. 75% of indigenous peoples in Chile now live in urban centres.

In theory indigenous peoples can avail themselves of the governments' home ownership subsidy program in urban centres. However, there are a number of barriers to accessing the program. For example, the subsidy requires proof of title to land, which as the government knows, is a sometimes impossible criterion for indigenous peoples to meet. Moreover, this program has not been adapted to meet the particular cultural needs of indigenous peoples.

While I did learn of two rural programs to assist Indigenous peoples (*Rural Liveability and Shaman housing schemes*), these are insufficient to meet the needs of indigenous rural dwellers. In particular, the dominance and prioritization of the forestry industry has resulted in a severe lack of access to on-site potable water for thousands of rural dwellers, who instead have water brought to them by trucks.

1. Access to Justice

The Constitution of Chile does not include the right to adequate housing. It protects property rights. As a result, there is little Constitutional jurisprudence and litigation directly claiming the right to housing. At the same time, the constitutional reform of article 5 (law No. 18.825) recognizes that all rights included in treaties ratified by Chile must be promoted and respected by the State. Considering that Chile has ratified the International Covenant on Economic, Social and Cultural Rights, and other relevant treaties such as the CRPD, it has international obligations in relation to the right to adequate housing and to non-discrimination in this regard.

Some Higher court decisions in Chile have been based on the interdependence of rights, deciding for example, that the right to adequate housing is essential to guarantee rights enumerated in the Constitution, the right to a family, to private life, to personal security, to health and to life. A decision by the Court of Appeals in Temuco, for instance, used a protective measure (*recurso de protección*) to recognize the obligation of the state to develop public policies to guarantee access to housing with priority given to vulnerable groups, regardless of income or access to economic resources. While these kind of decisions are relatively scarce, my view is that their dissemination and stronger capacity building about economic, social and cultural rights among judges and lawyers could play a role in enhancing access to justice for the right to adequate housing in Chile.

Another mechanism that seems not to have been explored to its full potential is the use of the Anti-Discrimination Law, law 20.609 of 2012, in relation to the housing sector, including rentals.

4. Key Recommendations

1. Only once housing is defined as a human right, rather than as a

1. Only once housing is viewed as a human right, rather than as a commodity, will the most vulnerable people in Chile be able to enjoy adequate housing. In this regard, I recommend:

- a) the Constitutional reform process should be completed and should include the full range of justiciable economic, social and cultural rights including the right to housing;
- b) the reformed Constitution should recognize the intercultural nature of Chilean society;
- c) the reformed Constitution should explicitly recognize all indigenous peoples in Chile as a protected group and must guarantee their rights;
- d) Anti-discrimination law (law 20609), in particular Articles 1 and 2 should be used more consistently to address discrimination in the private rental market.

2. The government must take immediate steps to address discrimination against and stigmatization of those living in campamentos, informal settlements and on the peripheries of cities, including through the enforcement of anti-discrimination legislation, and public education campaigns.

3. The Government of Chile should continue to diversify its approach to housing, ensuring it focuses on quantitative needs, considering more supply-side solutions to ensure the most vulnerable groups are housed adequately as soon as possible. It should also pay particular attention to geographic, social and cultural diversity, and enhance cultural adequacy.

4. For almost 40 years central government has played only a financial role with respect to housing for vulnerable populations. I recommend a more active role. In this regard, central government could:

- a) Undertake a comprehensive survey of housing needs disaggregated by marginalized communities – indigenous peoples, migrants, older persons, persons with disabilities;
- b) Use or make available to other levels of government its land (for free or below market value) for the production of rent-geared to income social housing that could be targeted to priority populations such as those who are homeless, and migrants;
- c) Develop tax policies that penalize those with vacant lands, and that ensure a percentage of the real estate and construction sectors' profits are funnelled back into the development of affordable, adequate housing by the State.
- d) Provide the necessary legal framework to allow for different types of tenure beyond individual ownership, for example, cooperative housing, and other community ownership models.

5. The State must, through its administrative bodies, ensure that there is urban planning in all urban areas, effectively regulating the construction and use of land, in order to prevent speculation and the development of public or private projects that do not ensure the minimum elements of the right to adequate housing.

6. In line with its international human rights obligations including under the ICESCR, the CRPD, and Target 11.1 of the Sustainable Development Goals, Chile must immediately adopt a national strategy to eliminate homelessness and develop short and long-term housing solutions for people who are homeless – men, women, youth and children.

7. The law on migrants must be modernized immediately to protect the socio-economic rights of all migrants. Legislation regarding rental accommodation must also be modernized to better protect the rights of tenants.

8. Housing conditions in informal settlements must be addressed immediately to comply with international human rights commitments. At a minimum, basic services including water, sanitation and electricity must be provided to all communities on public lands. Laws must be reformed to ensure that such services will be available to communities on private lands until such time as those situations are resolved.

9. The national government must continue to provide resources to ensure all informal settlements are regularized in a timely manner. No eviction from private lands can be allowed to take place unless in strict compliance with international human rights law and unless alternative accommodation that is adequate is available to all residents.

10. The National action plan on business and human rights should be made relevant to the housing sector to include measures to regulate for example construction, land use and public services.

***** **END** *****

Information about the visit

At the invitation of the Government of Chile, 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 regard, Ms Leilani Farha, visited the country from 20 to 28 April 2017. She is grateful for the high level of cooperation she has received from the National Government, as well as from Regional Government and Municipalities with whom she met. She also commends the various authorities for their engagement, interest and for sharing ample information. The Special Rapporteur also wishes to thank the contributions, testimonies and insights from civil society and community-based organizations, as well as from lawyers and academics.

During these ten days of official visit, the Special Rapporteur was able to visit parts of Santiago, Valparaíso, Viña del Mar, Temuco and Antofagasta. She met with the Minister of Housing and Urbanism and senior officials from her Ministry as well as regional representatives (SEREMI and SERVIU). She also held meetings with the Minister of Social Development, and senior officials of this Ministry, including the Director of the National Disabilities Service. She met with the Minister of Women and Gender Equity, the Under-Secretary for Human Rights (part of the Ministry of Justice). She held a meeting with members of the Senate Committee for Housing and Urbanism; the President of the Supreme Court; the Director of the National Statistics Institution; the Director of the National Emergencies Office. The Special Rapporteur also met with the Director and staff of the National Human Rights Institution. She also met with the Chilean Chamber of Construction.

In addition, Ms Farha met with the 'Intendentes' (Regional authorities) of the Valparaíso, Araucanía and Antofagasta regions (V, IX y II, respectively), all of whom were accompanied by officials from the Ministry of Housing and Urbanism and of other Ministries. She also met with the Mayor of Viña del Mar and Valparaíso, and with the Association of Municipalities with Mapuche Mayors.

The Special Rapporteur has also deeply appreciated the engagement of civil society organisations, associations and resident groups in various parts of the cities she visited. She benefitted from academic researchers, lawyers, activists and experts with whom she has met. Thanks to their interest and efforts, she had the opportunity to receive testimonies and information not only from residents in the cities and towns she visited but also from other places, including Arica, Iquique and Calama.

The Special Rapporteur wishes to thank the United Nations Resident Coordinator and her team as well as the United Nations country team; and the Regional Office for South America of the Office of the High Commissioner for Human Rights for their support in planning, preparing and conducting of this visit.

¹ David Sirlópú, "Is multiculturalism a viable path in Chile? Intergroup and accumulative perspectives on Chilean society and Peruvian immigrants" (2013) 37 International Journal of Intercultural Relations 739-749, at 740 [Sirlópú].

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