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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

**Ref. File No. 2698-2017
of the Constitutional Court**

***Amicus Curiae* brief presented by Leilani Farha, the United Nations 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 for the case of the Community of Laguna Larga before the Constitutional Court of the Republic of Guatemala**

I. PRELIMINARY STATEMENT OF THE *AMICUS CURIAE*

This brief is submitted by the United Nations (“UN”) 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, Leilani Farha, as *amicus curiae*, to advise the Court on relevant international standards concerning the eviction of persons from public lands.¹

The Special Rapporteur, an independent expert appointed by the UN Human Rights Council, has the mandate to monitor and promote the full realization of the right to adequate housing as a component of the right to an adequate standard of living. The Special Rapporteur works in close cooperation with relevant UN treaty bodies in carrying out her mandate.

The purpose of this brief is to describe how forced evictions are viewed under international human rights law and the obligations of States in this context. After summarizing the facts as the Special Rapporteur understand them, the brief will outline provisions of international human rights law which seem relevant to these facts. She will explain, in particular, that evictions are only permitted under international human rights law in the most exceptional circumstances, after all options have been explored and where no reasonable alternative exists. In these exceptional circumstances, prior to any eviction, authorities are under the obligation to provide meaningful consultation with all affected persons and on the basis of these consultations provide land or an area for resettlement that is accepted by the community. In the case of development based evictions, the housing and land to which people are relocated must be of better or equal quality. Forced evictions that result in the loss of adequate housing constitute a *prima facie* violation of international human rights law. Where such violations have occurred, effective remedies, including compensation must be provided.

II. STATEMENT OF FACTS

The following is a summary of the facts in the case, as understood by the Special Rapporteur, drawn from public reports, including reports of the Inter-American Commission on Human Rights and Guatemalan governmental agencies.

For many years, about 450 persons of multiple backgrounds (Q’eqchi, Chuj, farmers, and mestizos) lived in the Community of Laguna Larga (the Community), located in the Maya Biosphere Reserve’s Multiple Use Zone, a national park protected under Guatemalan law.² The Community had a school, a church, and residents had small cultivations.³ In 2006, the Community began negotiations with *Consejo Nacional de Areas Protegidas* (CONAP), the Guatemalan governmental agency in charge of natural conservation. CONAP recognized the Community and allowed for the establishments of schools and a local mayor.⁴ The community was in negotiations for an

¹ The submission of the present *amicus curiae* brief is made on a voluntary basis without prejudice to, and should not be considered as a waiver, express or implied, of the privileges or immunities of the United Nations, its officials and experts on mission, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations, to which Guatemala is a party.

² Inter-Am. Comm’n H.R., Res. 36/2017, *Pobladores desalojados y desplazados de la Comunidad Laguna Larga respecto de Guatemala*, Precautionary Measure No. 412-17, at ¶ 5 (Sep. 8, 2017).

³ See *id.* at ¶ 25.

⁴ See Oficio No. 02-2008.Ref.DPNLT-JLME, CONSEJO NACIONAL DE ÁREAS PROTEGIDAS [CONAP] (Jan. 04, 2008); Aval Dirección Regional, CONAP REGION VIII (Oct. 23, 2006); Aval, CONAP REGION VIII (Jan. 19, 2006).

Acuerdo de Permanencia (accord of permanency), which would either establish the rights and obligations that the Community had in the land, or establish secure status elsewhere.⁵ However, CONAP decided to end negotiations and unilaterally brought criminal charges against the Community and initiated an eviction process. As reported to the Inter-American Commission on Human Rights, the people in the Community were never formally notified of the eviction process or the judicial procedure and, consequently, the members of the Community were not able to represent themselves in court.⁶

On May 31, 2017 the Community was notified that the government was sending State security forces to evict them.⁷ Concerned about a violent confrontation, the Community evacuated the area by foot on June 2.⁸ Upon the judicial order for the eviction, 1,500 officers of the *Policía Nacional Civil* (PNC) along with 300 members of the Guatemalan army, arrived in Laguna Larga to forcefully evict the Community.⁹ Officials of CONAP and the *Procurador de Derechos Humanos* (PDH) were also reportedly present. The PNC and the army destroyed hundreds of the Community's houses and occupied the schools.¹⁰ Members of the Community have been threatened by Guatemalan armed forces, who refused to allow them to go back to their land to obtain their personal property or tend to their harvest.¹¹

The Community is now residing on the Mexican side of the Guatemalan and Mexican border, near La Candelaria, Campeche state.¹² As the Inter-American Commission on Human Rights noted after its on-site visit, the Community lacks potable water, energy, and sanitation services.¹³ Members of the Community are living in tents or "champas" with thatched roofs, without adequate protection from the climate, animals, and other elements.¹⁴ The Community must go to the lake to wash their clothes and dishes, and must travel more than ten kilometers (about one hour by vehicle) to the closest place with potable water.¹⁵

Due to these precarious conditions the members of the Community are suffering multiple health issues.¹⁶ As of August, epidermal problems, respiratory infections, parasites and diarrhea had been reported as well as one case of a 2-year-old girl with a

⁵ *Pobladores desalojados y desplazados de la Comunidad Laguna Larga respecto de Guatemala*, *supra* note 1, at ¶ 27, n.6.

⁶ See *Pobladores desalojados y desplazados de la Comunidad Laguna Larga respecto de Guatemala*, *supra* note 1, at ¶¶ 22, 27, 27 n.6; see also Press Release 114, Inter-Am. Comm'n H.R., IACHR Wraps Up On-Site Visit to Guatemala (Aug. 4, 2017), http://www.oas.org/en/iachr/media_center/PReleases/2017/114.asp.

⁷ See Amnesty International, *Urgent Action: Hundreds Stranded at Mexico-Guatemala Border*, UA130/17 (June 8, 2017), <https://www.amnesty.org/download/Documents/AMR0164622017ENGLISH.pdf>; Rigoberto Escobar, *PNC desaloja a 70 familias de Laguna Larga, área protegida de Petén*, PRENSA LIBRE (June 5, 2017), <http://www.prensalibre.com/ciudades/peten/recuperan-laguna-larga-area-prottegida-de-peten>.

⁸ See *Pobladores desalojados y desplazados de la Comunidad Laguna Larga respecto de Guatemala*, *supra* note 1, at ¶ 23.

⁹ *Id.* at ¶ 24.

¹⁰ *Id.* at ¶ 25.

¹¹ *Id.* at ¶ 32.

¹² Amnesty International, *supra* note 6.

¹³ *Pobladores desalojados y desplazados de la Comunidad Laguna Larga respecto de Guatemala*, *supra* note 1, at ¶ 28.

¹⁴ *Id.* at ¶ 37.

¹⁵ *Id.* at ¶ 31.

¹⁶ *Id.* at ¶ 30.

serious staphylococcal infection on the face.¹⁷ The elderly have developed conditions that require medical treatment. The closest medical facilities are far from the location where the Community is staying.

The Community has received help from near-by towns, non-governmental organizations, and Mexican authorities. Some help was provided by the Guatemalan Government in July, 2017.¹⁸ However, the assistance provided has been insufficient. Due to the lack of food, as of August, 2017 there were at least thirty-six children suffering from malnutrition, all younger than five years of age.¹⁹ Based on its on-site visit and a review of the facts surrounding the forced evictions and current living conditions of the Community, the Inter-American Commission of Human Rights found that the members of the Community's right to life and integrity are in great danger of violation.²⁰ The Inter-American Commission found that Guatemala must take further measures to resolve this critical issue.²¹

III. RELEVANT LEGAL STANDARDS

This brief will describe Guatemala's human rights treaty obligations and international practices with regards to forced evictions. The Special Rapporteur hopes that the following overview of applicable international human rights norms may assist in the consideration of the government's obligations in the current circumstances.

1. International Standards

Through numerous UN human rights treaties ratified by Guatemala, emanating from the Universal Declaration of Human Rights, States parties are under the obligation to refrain from causing forced evictions and to protect the rights to life, adequate housing, dignity, and security. The right to adequate housing is most prominently contained in the International Covenant on Economic, Social and Cultural Rights (article 11, paragraph 1), but key components of the right to housing and protections from forced evictions are also contained in the International Covenant on Civil and Political Rights (articles 6, 17), the Convention on the Rights of the Child (article 27, paragraph 3), the Convention on the Elimination of All Forms of Discrimination against Women (article 14, paragraph 2(d)), the Convention on the Elimination of All Forms of Racial Discrimination (article 5(e)) and the Convention on the Rights of Persons with Disabilities (articles 10, 19, 28).

Under article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), States must "recognize the right of everyone to an adequate standard of living for himself [or herself] and his [or her] family, including adequate food, clothing and housing, and to continuous improvement of living conditions." In its General Comment No. 4 (E/1992/23), the Committee on Economic, Social and Cultural Rights ("Committee on ESCR"), which is responsible for interpreting and monitoring compliance by States parties with the ICESCR, stated that "all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats."²² It further stated that forced evictions are *prima facie* incompatible with the rights enshrined in the

¹⁷ *Id.* at ¶ 37.

¹⁸ *Id.* at ¶¶ 19, 29.

¹⁹ *Id.* at ¶ 29.

²⁰ *Id.* at ¶ 3.

²¹ *Id.* at ¶ 38.

²² Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) (E/1992/23 para. 1.

ICESCR.²³ In its General Comment No. 7, the Committee on ESCR explained that if any eviction would result in individuals being rendered homeless or vulnerable to the violation of other human rights, the State “must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”²⁴

The obligations of States parties under the ICESCR must be read in conjunction with rights in other UN human rights treaties.²⁵ These rights include the right to not be “subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence” as well as the right “to the protection of law against such interference or attacks,” as included in article 17 of the International Covenant on Civil and Political Rights and article 16, paragraph 1, of the Convention on the Right of the Child.²⁶ The Committee on ESCR has recognized that forced evictions may be a violation of civil and political rights, including the rights to life.²⁷

As defined in General Comment No. 7, the term “forced eviction” is not limited to unlawful or arbitrary evictions. Instead, forced eviction is defined as the permanent or temporary removal against the will of individuals, families and/or communities from the home and/or land which they occupy, without the provision of, and access to, appropriate form of legal or other protection.²⁸ Evictions are only permitted when carried out both in accordance with the law and in conformity with the provisions of international human rights treaties.²⁹

Since the adoption of the Optional Protocol to the ICESCR, the Committee on ESCR has had the opportunity to further clarify the obligations under the Covenant with respect to evictions in the context of individual cases. In the case of *M.D.G. and others v. Spain* (Communication 5/215) the Committee held that forced eviction is prima facie incompatible with the requirements of the Covenant and can be justified only in the most exceptional circumstances, and in accordance with the relevant principles of international law.³⁰ The Committee held that in these exceptional circumstances when eviction is justified, it must be carried out “in accordance with legislation that is compatible with the Covenant, including the principle of human dignity contained in the preamble, in accordance with the general principles of reasonableness and proportionality and in keeping with procedural protections which include, inter alia, an opportunity for genuine consultation with those concerned.”³¹ The Committee held that “there must be a real opportunity for genuine prior consultation between the authorities and the persons concerned, there must be no less onerous alternative means or measures

²³ *Id.* para. 18.

²⁴ Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997), para. 16.

²⁵ *Id.*, para. 8.

²⁶ Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), para 9.

²⁷ See General comment No. 7, para 4.; 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), *The Right to Life + the Right to Adequate Housing: The Indivisibility and Interdependence Between these Rights*, ¶ 4, U.N. Doc. A/71/310 (Aug. 8, 2016).

²⁸ Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997), para 4.

²⁹ *Id.*

³⁰ *M.D.G. and others v. Spain* (Communication 5/215) para 13.3 *Ibid.*, para. 18, and general comment No. 7, para. 1.

³¹ *Ibid.*, para 13.4; General comment No. 7, para.15. See also Constitutional Court of South Africa, judgment in *Occupiers of 51 Olivia Road v. City of Johannesburg* [2008] ZACC 1, paras. 9–23. The Supreme Court of India has also underscored the safeguards in cases of eviction: see *Olga Tellis & Ors v. Bombay Municipal Corporation*, *All India Reporter*, 1986, 180.

available and the persons concerned must not remain in or be exposed to a situation constituting a violation of other Covenant or human rights.”³² The Committee recalled that there cannot be a right without an effective remedy and that persons whose right to adequate housing might be affected as a result of a forced eviction must be accorded access to effective and appropriate judicial remedies.³³

The Committee emphasized in particular that evictions should not render individuals homeless. It stated that where those affected do not have the means to acquire alternative housing, States parties must take all appropriate measures to ensure, where possible, that adequate alternative housing, resettlement or access to productive land, as the case may be, is available. The Committee held that States must pay particular attention to the effects of evictions on women, children, older persons, persons with disabilities or other vulnerable individuals or groups who are subjected to systemic discrimination.³⁴ “Policies on alternative housing in case of eviction should be commensurate with the need of those concerned and the urgency of the situation and should respect the dignity of the person.”³⁵

In my capacity as UN Special Rapporteur on the right to adequate housing, I have reported to the UN Human Rights Council on the scope of States’ obligations with regards to preventing and addressing homelessness. I stated that “[e]victions should never render individual homeless. The prohibition of evictions leading to homelessness is immediate, absolute and is not subject to available resources.”³⁶ Moreover, “[e]viction without full consultation with those affected is a clear violation of international human rights. The obligation to explore every alternative to eviction, never to evict into homelessness and to ensure that residents are adequately consulted about resettlement plans should be applied under domestic law to both private and public land.”³⁷ Consequently, it is imperative that when the government evicts people, it must provide meaningful consultation to all persons affected, and the government must further provide adequate housing that meets better or equal standards of living than the original land, and satisfies other requirements of the right to adequate housing.³⁸

The UN Human Rights Committee, the body charged with authoritative interpretation of the International Covenant on Civil and Political Rights (ICCPR), has found that State interference with housing that renders individuals vulnerable to homelessness can also constitute a violation civil and political rights in the ICCPR.³⁹ In *Georgopoulos et. al. v. Greece*, a Roma family left the settlement they had been living

³² M.D.G.and others v Spain, para 13.4.

³³ M.D.G. and others v. Spain, para 13.4

³⁴ M.D.G. and others v. Spain, para 15.2

³⁵ M.D.G. and others v. Spain, para 15.3 citing the Special Rapporteur’s report on homelessness (A/HRC/31/54, paras. 28–38).

³⁶ 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), U.N. Doc. A/HRC/31/54 (Dec. 30, 2015).

³⁷ *Id.*, ¶ 49(d) (emphasis added).

³⁸ Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997), para. 16; Basic Principles and Guidelines on Development-Based Evictions and Displacement, A/HRC/4/18, para. 16 (citing to general comment No. 4 on the right to adequate housing, adopted by the Committee on Economic, Social and Cultural Rights in 1991).

³⁹ 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), *The Right to Life + the Right to Adequate Housing: The Indivisibility and Interdependence Between these Rights*, ¶ 38, U.N. Doc. A/71/310 (Aug. 8, 2016).

in for a short period of time for seasonal employment.⁴⁰ During that period, the municipal officials demolished their shed and prevented the construction of a new one. The Human Rights Committee found that the demolition and prevention of construction of the shed constituted a violation of articles 17 (interference with the home), 23 (protection of the family), and 27 (right to enjoy one's culture).⁴¹ In a concurring opinion, a member of the Human Rights Committee, agreed with the Committee's declaration that there was a possible violation of article 7 of the ICCPR, which prohibits torture and cruel, inhuman or degrading treatment, but went further to explain that the decision recognized the principle of interdependence and indivisibility of rights.⁴²

Forced eviction, without resettlement to adequate housing, violates human rights law even if the individual or community was not the title holder of the land from which residents were evicted. In General Comment 4, the Committee on ESCR states that the right to security of tenure includes protection from eviction from informal settlement or occupied land.⁴³ These protections also apply under the ICCPR. In *Liliana Assenova Naidenova et. al. v. Bulgaria*, the Human Rights Committee considered a case in which a community lived in unlawfully constructed buildings on municipal land.⁴⁴ After refusing to leave voluntarily, the Sofia Municipality issued an order of eviction for the community, which was affirmed by the local and administrative courts.⁴⁵ In reviewing this case, the Human Rights Committee noted that, "although the State party's authorities are in principle entitled to remove the authors, who occupy municipal land unlawfully, . . . the State party has not identified any urgent reason for forcibly evicting the authors from their homes before providing them with adequate alternative accommodations."⁴⁶ The Human Rights Committee ultimately found that the evictions would constitute a violation of article 17 of the ICCPR because the municipality provided no due consideration to the consequences for the evictees, such as the risk of becoming homeless, and provided no satisfactory replacement housing immediately.⁴⁷ Consequently, the State was under the obligation to stop the evictions until satisfactory housing was available.⁴⁸

The right to adequate housing guarantees housing that is adequate to have a dignified life. As the Committee on ESCR stated in General Comment No. 4:

The right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.⁴⁹

Adequate housing standards dictated in the ICESCR General Comment No. 4 include

⁴⁰ See Communication No. 1799/2008, *Georgopoulos et. al. v. Greece*, views adopted on July 29, 2010, para. 2.1.

⁴¹ *Id.*, para 38; see also U.N. Doc. A/HRC/310, para 38.

⁴² Communication No. 1799/2008, para. 3.

⁴³ Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), para 8(a).

⁴⁴ See Communication No. 2073/2011, *Liliana Assenova Naidenova et. al. v. Bulgaria*, Views adopted on Oct. 30, 2012, para. 2.2.

⁴⁵ *Id.*, para. 2.3.

⁴⁶ *Id.*, para. 14.5.

⁴⁷ *Id.*, para. 15.

⁴⁸ *Id.*, para. 16.

⁴⁹ Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), para 7.

(a) security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordable housing; (d) habitability; (e) accessibility; (f) adequate location; and (g) cultural adequacy.⁵⁰ In order to ensure availability of services, material, facilities and infrastructures, the housing must contain potable water, energy for cooking, heating and lighting, sanitation and such as potable water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services, and access to natural and common resources, where appropriate.⁵¹ For security of tenure, the state must ensure that the inhabitants enjoy privacy and security, participation in decision-making, freedom from violence, and access to remedies if their rights are violated.⁵² For habitability, the state must ensure adequate space, protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease and ensure the physical safety of occupants.⁵³ For accessibility, the housing must be accessible to disadvantaged groups such as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, and all other disadvantaged groups.⁵⁴ For adequate location, the house must provide access to employment options, health-care services, school, childcare centers and other social facilities.

2. Forced evictions without adequate procedural protections also violate the American Convention on Human Rights

In the Inter-American human rights system, the right to adequate housing is enshrined in article XI of the American Declaration of the Rights and Duties of Man, 1948, articles 21 and 22 of the American Convention on Human Rights (“ACHR”), as well as the combination of article 26 of the ACHR and article 34(k) of the Charter of the Organization of American States.

The Inter-American Court of Human Rights (“Inter-American Court of HR”) has consistently held that the right to secure housing is intrinsically tied to all other human rights. In the *Case of Ituango Massacre v. Colombia*,⁵⁵ the Inter-American Court of Human Rights analyzed a case where paramilitary groups displaced residents of a town and burned down their homes.⁵⁶ The Court recognized “the inviolability of the home and privacy from the perspective of Article 11(2) of the [ACHR]”⁵⁷ and affirmed “that the sphere of privacy is characterized by being exempt from and immune to abusive and arbitrary invasion or attacks by third parties or the public authorities.”⁵⁸

Moreover, the Inter-American Court of Human Rights has recognized that the rights enshrined in ICESCR (*see supra*) provide guidance in interpreting State obligations under the American Convention.⁵⁹ In the *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, when assessing the compensation that Nicaragua owed to the victims of a massacre, the Inter-American Court found that pecuniary and non-pecuniary damages were not sufficient, but that, among other things, the State was

⁵⁰ *Id.*, para. 8.

⁵¹ Basic Principles and Guidelines, ¶ 55.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Judgment, July 1, 2006, Series C. No. 148.

⁵⁶ *Id.* para. 182.

⁵⁷ *Id.*, para. 192.

⁵⁸ *Id.* para. 194.

⁵⁹ See 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), *Homelessness as a Global Human Rights Crisis that Demands an Urgent Global Response*, ¶ 55(d), U.N. Doc. A/HRC/31/54 (Dec. 30, 2015).

under the obligation to provide adequate housing to the surviving victims, in accordance to the application of the ICESCR, General Comment No. 4.⁶⁰

The jurisprudence of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights also recognizes the obligation of States to protect the right to land and adequate housing in the context of the rights of indigenous communities and the right to dignified life.⁶¹ For example, in *Villagrán Morales et. al. v. Guatemala*,⁶² the Court found that the fundamental right to life not only imposes on the State the obligation not to deprive anyone of life arbitrarily, but also the positive obligation to create and protect the conditions to guarantee a dignified life, and “the duty to prevent its agents from violating it.”⁶³ This concept was applied to protect the rights to ancestral lands in *Sawhoyamaxa v. Paraguay*,⁶⁴ where an indigenous community was displaced from its land, without access to basic services, sanitation and healthcare. The court held that a State that failed to adopt necessary measures to avoid a risk to life, would be in violation of the obligation to protect the right to life if at the moment, authorities “knew or should have known about the existence of a situation posing an immediate and certain risk to the life of an individual or of a group of individuals.”⁶⁵ After noting that the State had been officially notified of the poor conditions that the indigenous community lived in and had failed to relocate the community to a place near where they traditionally lived, the Court concluded that the State failed to adopt the necessary measures to address a known risk to life.⁶⁶

3. Ensuring Compliance with Relevant Treaty Obligations in the Context of Forced Evictions

Based on the rights described above, the former United Nations Special Rapporteur on adequate housing as a component of the rights to an adequate standard of living, Miloon Kothari, issued Basic Principles and Guidelines on Development-Based Evictions and Displacement (Basic Principles and Guidelines) which describes what is required to ensure compliance with relevant legal standards.⁶⁷ The Guidelines explain that when the State has a plan to evict citizens, it must: (a) appropriately notify all potentially affected persons of the eviction and “that there will be a public hearing on the proposed plans and alternatives”; (b) effectively disseminate “relevant information in advance, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups”; (c) provide “a reasonable time period” for the public to review, comment, and object to the proposed plan; (d) demonstrate that it provided “opportunities and efforts to facilitate the provision of legal, technical and other advice to affected persons about their rights and options”; and

⁶⁰ Inter-American Court of Human Rights, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of Aug. 31, 2001, paras. 93, 105.

⁶¹ *Accord.*, 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), *Homelessness as a Global Human Rights Crisis that Demands an Urgent Global Response*, U.N. Doc. A/HRC/31/54 (Dec. 30, 2015).

⁶² Inter-American Court of Human Rights, *Case of the “Street Children” (Villagrán-Morales et. al.) v. Guatemala*, Judgment of Nov. 19, 1999.

⁶³ *Id.*, para. 144.

⁶⁴ Inter-American Court of Human Rights, *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*, Judgement of March 29, 2006.

⁶⁵ *Id.*, para. 155.

⁶⁶ *Id.*, paras. 156-66.

⁶⁷ Rep. of the Special Rapporteur on Adequate Housing as a Component of the Rights to an Adequate Standard of Living, *Implementation of the General Assembly Resolution 60/251 of 15 March 2006*, U.N. Doc. No. A/HRC/4/18, Annex 1 (Feb. 5, 2007) (hereinafter “Basic Principles and Guidelines”).

(e) hold public hearings that provide “affected persons and their advocates with the opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities.”⁶⁸

The State should “explore fully all possible alternatives to evictions.”⁶⁹ Evictions are only permitted if they are “unavoidable and consistent with international human rights commitments protective of the general welfare.”⁷⁰ As has been established by the Committee on ESCR, evictions should not result in homelessness or render the community “vulnerable to the violation of other human rights.”⁷¹ Consequently, States should follow numerous precautions prior to evictions.

Affected groups – especially women, indigenous people, and persons with disabilities – should have the right of consultation and participation through the entire process, with legal representation, and to propose alternatives that the State must consider.⁷² Government should announce decisions related to eviction to all individuals affected well in advance of any action. The notice of eviction should contain the justification for the decisions including a concrete assessment in full details of all proposed alternatives and all the measures “taken and foreseen to minimize the adverse effects of evictions.”⁷³ The people affected must have time to access legal counsel to represent their interests in the decision and, if the State decides to proceed with eviction, there must be the right for an independent body that has the constitutional authority to review and listen to all affected parties.

Where all of the above procedures have been followed, and where in exceptional circumstances, eviction has been found to be unavoidable, people subject to eviction must have adequate time to take inventory of all of their properties, investment and other material goods that will be affected by the move.⁷⁴ This will give them the opportunity to assess and document all monetary and non-monetary losses caused by the evictions.⁷⁵

Finally, the State must have a resettlement plan in place for the people affected. All persons, groups, and communities affected by resettlement reassures should have at least ninety days’ notice before the settlement is enforced.⁷⁶ The state must adopt measures to ensure adequate housing for the evicted people and communities. The measures must be implemented prior to the eviction and be consistent with “present guidelines and internationally recognized human rights principles.”⁷⁷

4. Obligations during eviction

As described above, under the relevant legal standards, the State must carry out any necessary evictions in a manner that does not violate the dignity and human rights to life and security to those affected. This is especially true with respect to women and children, who are particularly vulnerable to violations of human rights.⁷⁸

⁶⁸ Basic Principles and Guidelines, at ¶ 37.

⁶⁹ *Id.* at ¶ 38.

⁷⁰ *Id.* at ¶ 40.

⁷¹ *Id.* at ¶ 43.

⁷² *Id.* at ¶ 38.

⁷³ *Id.* at ¶ 41.

⁷⁴ *Id.* at ¶ 42.

⁷⁵ *Id.*

⁷⁶ *Id.* at ¶ 56(j)

⁷⁷ General Principles and Guidelines, ¶ 44.

⁷⁸ *Id.* at ¶ 47.

The procedures should guarantee that government officials or their representatives are present and identified to the evictees during the evictions; if requested; the State must allow access to neutral observers, including regional and international observers, to ensure transparency and compliance with international human rights laws; the State's legal use of force must be proportional and not violate domestic and international laws;⁷⁹ the State must not carry out an eviction during inclement weather; the State and its agents must ensure that no one is subject to attacks or other acts of violence, or arbitrarily deprived of property or possessions as a result of demolition, arson or other form of deliberate or negligent conduct. In other words, the State is under the obligation to ensure that the process of evictions does not harm the evictees or damage their property. The State must protect the evictee's dignity and wellbeing as well as their property during the eviction.

5. Obligations after an eviction

Before, during, or immediately after an eviction, the State must provide relief and relocation to the persons and communities affected.⁸⁰ Compensation and sufficient accommodation must be provided. As noted in the Basic Principles and Guidelines, the State must ensure at a minimum that evicted persons or groups have safe and secure access to the following: (a) essential food, potable water, and sanitation; (b) adequate housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and resources previously depended upon; and (g) education for children and childcare facilities. States should not carry out evictions that separate a family or community.

The Principles and Guidelines provides that all costs related to the resettlement must be paid by the actors carrying out the resettlement. The resettlement shall not cause detriment to the human rights or infringe the right to the continuous improvement of living conditions to any persons, groups or communities either during the eviction process or when living in the resettlement sites. The State must provide all necessary amenities, services and economic opportunities at the relocation sites. The sites cannot be polluted or in immediate proximity to pollution.

IV APPLICATION TO THE PRESENT CIRCUMSTANCES

1. Guatemala must provide immediate relief and relocation to the community evicted.

In the present case, based on the information provided to the Special Rapporteur, it appears that the State failed to take measures to provide the protections of security of tenure and other fundamental human rights, to ensure adequate notice of the eviction, to engage in consultation regarding resettlement plans or to ensure access to adequate alternative housing.

Throughout the process of eviction, the State reportedly failed to protect the property of the evictees. The Community was reportedly forced to leave their property

⁷⁹ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

⁸⁰ Basic Principles and Guidelines, ¶ 52.

without adequate time to arrange for the transport of personal property.⁸¹ There are multiple reports of hundreds of houses destroyed.⁸²

The community is currently staying in improvised camps at the border between Mexico and Guatemala, on the Mexican side.⁸³ According to the Inter-American Commission of Human Rights, the Community does not have access to essential food, potable water, and sanitation, let alone access to services, materials, facilities and infrastructure.⁸⁴ There is no energy for cooking, heating and lighting, no washing facilities, and no means of food storage, refuse disposal, site drainage or emergency services.⁸⁵ While Guatemala has provided some support, the Inter-American Commission observed that aid has been insufficient and the people in the Community are still living in precarious conditions.⁸⁶

The makeshift camp where the community is staying leaves individuals exposed to all weather conditions harmful to their health. These conditions do not even meet the standards of what international human rights law requires of States in circumstances of disaster or other emergencies, to ensure protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors, and ensure the physical safety of occupants. These conditions demand immediate relief.

2. Guatemala must provide fair compensation and a right of return

States must ensure the right to timely access to remedies to all persons threatened or subject to forced eviction.⁸⁷ The State must provide fair and just compensation for any losses that the evictee suffers. Such losses may include “personal, real or other property or goods, including rights or interests in property.” When assessing economic damages and compensation, consideration must be given to each circumstance including “loss of life or limb; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services.”⁸⁸ However, under no circumstances shall cash compensate for the loss of land and common property resources. The only possible compensation for the loss of land is land of comparable quality and size, or better.⁸⁹

The Principles and Guidelines provide that even those who do not hold title to their properties are entitled to compensation. This means compensation for the “loss, salvage and transport of their properties affected, including the original dwelling and

⁸¹ *Pobladores desalojados y desplazados de la Comunidad Laguna Larga respecto de Guatemala*, *supra* note 1, at ¶ 32 (Sep. 8, 2017).

⁸² See *Pobladores desalojados y desplazados de la Comunidad Laguna Larga, área protegida de Petén*, *supra* note 1, at ¶ 37; Gloria Serrano, *Los Patojos: niños y niñas de Laguna Larga*, *El Salto* (Oct. 18, 2017) (Spain), <https://elsaltdiario.com/zero-grados/los-patojos-ninos-y-ninas-de-laguna-larga>; Escobar, *supra* note 6.

⁸³ Amnesty International, *supra* note 6.

⁸⁴ See *Pobladores desalojados y desplazados de la Comunidad Laguna Larga respecto de Guatemala*, *supra* note 1, at ¶ 37 (Sep. 8, 2017).

⁸⁵ *Id.*

⁸⁶ *Id.* ¶ 38; *Abortos y otros vejámenes, el drama de los guatemaltecos desplazados en México*, PRENSA LIBRE (Oct. 14, 2017) (Guat.), <http://www.prensalibre.com/guatemala/comunitario/hijos-de-guatemaltecos-desplazados-de-laguna-larga-sufren-las-consecuencias-en-mexico>.

⁸⁷ Basic Principles and Guidelines, ¶ 59.

⁸⁸ Basic Principles and Guidelines, ¶ 60.

⁸⁹ *Id.*

land lost or damaged in the process.”⁹⁰ Adjudicative process must consider the circumstances of each case and ensure full compensation for losses related to informal property.

In the case that the State did not provide adequate resettlement to the people subject to eviction, those people should be provided with the right to voluntarily return to their original dwellings.⁹¹ The State should provide and facilitate the return of the people evicted. The government must also assist the evicted people, to the maximum extent possible, to recover the property and possessions that they left behind.⁹² Moreover, the State must allow participation of all evicted persons in the restitution and return process.⁹³ This is especially true for women in order to ensure their “equal and effective participation in return or restitution processes in order to overcome existing household, community, institutional, administrative, legal or other gender biases that contribute to marginalization or exclusion of women.”⁹⁴ If return is impossible, then the state must provide just compensation, restitution, and adequate resettlement immediately.⁹⁵

V. Conclusion

The eviction of the Laguna Larga Community appears to have been incompatible with relevant international human rights law in multiple respects. It was carried out without exploring all possible alternatives, without consultation with the community affected, without adequate notice, procedural safeguards or protection of dignity and fundamental human rights. There was no appropriate planning for acceptable alternative land and housing.

The circumstances of those affected are urgent and action must be taken immediately to address ongoing violations of fundamental human rights, including the right to life. The Community must be provided with effective remedies consistent with the requirements of international human rights law described above.

Respectfully

Leilani Farha

UN Special Rapporteur on adequate housing and the right to non-discrimination in this context

⁹⁰ Basic Principles and Guidelines, ¶ 61.

⁹¹ Basic Principles and Guidelines, ¶ 65.

⁹² Basic Principles and Guidelines, ¶ 66.

⁹³ Basic Principles and Guidelines, ¶ 65.

⁹⁴ *Id.*

⁹⁵ Basic Principles and Guidelines, ¶ 67.