

Joint Submission
to the United Nations Special Rapporteur on Adequate Housing as a
Component of the Right to an Adequate Standard of Living

18 November 2019

Comment on the Guidelines for the implementation of the right to
adequate housing

Socio-Economic Rights Institute of South Africa (SERI)

in collaboration with

Members of the Steering Group of the South Africa's Ratification Campaign of the International
Covenant on Economic, Social and Cultural Rights and its Optional Protocol

United Nations Special Rapporteur on the right to adequate housing

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Dear Special Rapporteur,

Re: Comments on Draft Guidelines for the implementation of the right to adequate housing

As per your request, the South African Civil Society Coalition on the ICESCR has reviewed and considered the draft Guidelines for the implementation of the right to adequate housing. The document proposes a framework of guidelines that could feasibly help States to reach target 11.1 of the Sustainable Development Goals, adopted by all United Nations Member States in 2015, to ensure access for all to adequate, safe and affordable housing and basic services and upgrade informal settlements by 2030.

The South African Civil Society Coalition on the ICESCR comprises various organisations which work towards the realisation of socio-economic rights in South Africa. The driver group includes the Black Sash; the Dullah Omar Institute for Constitutional Law, Governance and Human Rights (DOI), based at the University of the Western Cape; People's Health Movement South Africa (PHM-SA); the Socio-Economic Rights Institute of South Africa (SERI); and, the Studies in Poverty and Inequality Institute (SPII). The Campaign also includes individual experts, Jackie Dugard and Lilian Chenwi (both based at the School of Law at the University of the Witwatersrand) and the Institute for Poverty, Land and Agrarian Studies (PLAAS), based at the University of the Western Cape.

The Coalition generally agrees with the proposed Guidelines and would like to highlight the importance of specific guidelines, particularly:

- *Guideline 4*, which recommends that States “Address discrimination and ensure equality” and notes the importance of ensuring that people with disabilities in public and private housing should be able to access housing on an equitable basis. The provision of housing which is usable by as many people as possible without the need for special adaptation will allow people with disabilities to fully integrate into society;
- *Guideline 6*, which recommends that States “Eliminate homelessness in the shortest possible time” and notes the importance of ensuring that individuals and families are not forced to rely on emergency accommodation for extended periods of time. In many instances, households

can remain in “temporary” accommodation for years. The guideline encourages States to provide access to “secure and suitable” permanent housing.

- *Guideline 8*, which recommends that States “Clarify the obligations of businesses in relation to the right to housing and address financialization of housing”. The guidelines highlight that it is important for States to take measures to maintain a regulatory framework that preserves security of tenure and affordable housing for tenants, including through capping or setting control on rents and, of encouraging alternative ownership models such as shared ownership.
- *Guideline 9*, which recommends that States “Ensure the right to housing for migrants” including ensuring that housing agencies not engage in discriminatory practices and ensuring that migrants can enjoy the right to adequate housing regardless of their migration status.
- *Guideline 10*, which recommends that States “Ensure meaningful participation of all those affected in the design, implementation and monitoring of housing policies, programs and strategies”. The Special Rapporteur notes that meaningful participation goes beyond pro-forma consultations, that those affected must be able to influence the decision-making process, and that legal mechanisms must be in place to ensure that effective participation takes place and to provide an avenue for redress when housing policy and decision-making does not include meaningful participation;
- *Guideline 12*, which recommends that States “Upgrade informal settlements incorporating a human rights-based approach” and specifies that the upgrading process should take into account that residents must have continued access to their livelihoods and that the upgrading process should be undertaken in the shortest possible time given the available resources;
- *Guideline 13*, which recommends that States “Prohibit forced evictions and prevent any evictions”. The Guideline highlights the need to take preventative measures to address the underlying causes of eviction and displacement.

South Africa is faced with a housing crisis which disproportionately impacts the most vulnerable and marginalised in society. While we have a progressive legal and policy framework governing the right to housing, the implementation of the right to adequate housing has been impeded by insufficient capacity, a lack of co-ordination, lack of adequate monitoring of the implementation of government policies, and a lack of political will. Further, the State’s failure to adequately regulate the private sector has resulted in the formal housing market being inaccessible to the majority of South Africans.

The Coalition believes that *the proposed Guidelines will provide States with a framework to effectively address the challenges of informal settlements, homelessness, and insecure tenure*. It is imperative that States focus on improving mechanisms for monitoring the progressive realisation of the right to housing, and clarify the respective powers and duties of different levels of government in implementing strategies to realise the right to adequate housing and to implement pro-poor and

enabling regulation of private actors. The Guidelines explicitly highlight the need for increased State action and intervention in these areas.

The Guidelines also note the importance of public officials meaningfully engaging with the potential beneficiaries of housing policies and projects. Effective engagement will ensure that the development of housing takes into account and build upon local norms, practices, coping mechanisms and livelihoods strategies in upgrading built environments thereby minimizing the relocation and disruption of communities.

From its collective experience, *the Coalition suggests that the Guidelines would be strengthened by more explicitly highlighting the need for policies which promote spatial justice, including improved access for poor and low-income households to well-located accommodation, and improving accessibility to social and economic opportunities.* This would mean emphasising the State's responsibility to facilitate access to affordable public or private rental housing and would require transparency in the housing provision process. *The Guidelines should specifically highlight the potential for corruption and maladministration within the housing provision process, and call for improved transparency, accountability and participation in decision-making processes.*

The Guidelines should also highlight the importance of affordable public rental housing. In Guideline 8, the Special Rapporteur alludes to rent caps or control as a potential measure states could take to align private investment in the housing market with the implementation of the right to housing. While this is a necessary step, States must take more proactive steps to ensuring that households are able to access affordable rental housing. This could include public rental accommodation which would provide secure tenure at affordable prices, ensuring increased access to adequate and safe housing. Adequate public rental accommodation requires States to look into accumulating ownership of housing to be made available for affordable public rental. A starting point is for States to expropriate existing buildings in the public interest, especially in urban and inner-city contexts, that stand empty or are occupied by low-income groups and have been abandoned by private owners, in accordance with local policy guidelines applicable to expropriation in the public interest.

In addition to clear recommendations on the State's obligation to facilitate the provision of affordable public rental housing, the Coalition recommends the inclusion of language that obligates States to create mechanisms that will allow people to access the housing market. An example would be the development of inclusionary housing policies which aims to ensure that poor and low-income households are able to access affordable rental housing in well-located areas. This mechanism is sorely needed in South Africa owing to the impact of apartheid-era policies that forced poor and low-

income households to the peripheries of cities, far from the economic centres and employment opportunities.

In addition, the Special Rapporteur recommends that enforcement authorities, including courts and tribunals, should receive training on equality issues to avoid discrimination and stigma against specific groups. *The Coalition recommends that enforcement authorities receive training on the right to adequate housing as it is articulated in national and international laws in order for them to be capacitated to properly enforce them.* In South Africa, various laws already in place are often misinterpreted or misapplied by courts and tribunals, weakening their effectiveness and limiting the protection they provide to vulnerable groups.

Notwithstanding these additions, the Coalition endorses the adoption of these draft Guidelines insofar as they provide a framework for the achievable goal of providing access for all to adequate, safe and affordable housing.

Please do not hesitate to contact us if you require any clarifications.

On behalf of the coalition of civil society organisations

Yours Sincerely,

Gladys

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This submission letter is endorsed by:

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- People's Health Movement South Africa (PHM-SA)
- Institute for Poverty, Land and Agrarian Studies (PLAAS)
- Lawyers for Human Rights (LHR)
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- Socio-Economic Rights Institute of South Africa (SERI)
- Studies in Poverty and Inequality Institute (SPII)
- Prof Jackie Dugard, University of the Witwatersrand, Johannesburg
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