

Third-party submission by
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,
Ms LEILANI FARHA

ON THE
Communication 5/2015

MDB et al.

v.

SPAIN

UNDER CONSIDERATION BY
THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Geneva, 31 January 2017



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I. Introduction

1. In its letter of 25 October 2016 the Committee on Economic, Social and Cultural Rights [the Committee] accepted the request by the Special Rapporteur on adequate housing to provide a third-party submission in relation to Communication 5/2015, under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights [OP-ICESCR]. The Committee invited the Special Rapporteur to do so with a focus on the following issues:
 - i. State obligations to prevent and respond to homelessness, including human rights obligations of sub-national governments;
 - ii. Security of tenure as a requirement following from the right to adequate housing; and
 - iii. Forced evictions and protecting the right to adequate housing in the context of austerity measures.
2. Without taking a position on the authors' allegations, the Special Rapporteur notes that the facts presented in the communication raise important questions regarding the nature and scope of State obligations with respect to the right to adequate housing. Specifically

the petition raises questions about obligations to ensure security of tenure and protect from homelessness in the context of private market rental contracts when a lease period has expired or when tenants find themselves unable to pay rent. The petition also raises questions related to: a) the intersection of individual circumstances with broader systemic factors which may lead to homelessness and the need for both individual and systemic remedies; b) State obligations to take positive measures to prevent and/or eliminate homeless in periods of economic crisis and austerity; and c) State obligations to ensure access to justice for those facing eviction and those who are homeless or at risk of homelessness, including through judicial recognition of homelessness as a violation of the right to life.

3. The following facts, as described in the communication, pertaining to the termination of the authors' tenancy, their eviction from their home, their inability to secure alternative housing, and their attempts to secure effective remedies before domestic courts, are particularly relevant to the Special Rapporteur's analysis.
4. The authors are parents of two young children aged 2 and 4 (at the time of the submission of the communication). They rented an apartment in Madrid pursuant to a tenancy agreement with a private landlord which expired on 31 August 2012. They had previously applied to the Municipality of Madrid for public housing, dating back to 1999 and had re-applied every year but had not been offered an apartment. After MDB lost his job and his unemployment benefits expired, they did not have means to cover their rental costs after June, 2012 and fell into rent arrears.¹ They sought financial assistance from the Municipality of Madrid Social Service to enable them to pay the rent and remain in their apartment until an alternative could be found but were unable to obtain sufficient assistance to do so.² After August 2012, the landlord declined to renew the lease and took action to have the authors evicted from the apartment. After being evicted from their apartment the authors and their children stayed in a family shelter but were required to leave after 10 days.³ After leaving the family shelter the authors slept in their car for four days with their children and subsequently moved in with an acquaintance.⁴
5. In response, the State argues that the lack of income for housing and homelessness to which the family was subjected was the result of MDB's lack of motivation to actively search for employment, the family's refusal to be split up so that part of the family could reside temporarily at a women's shelter, and his wife's [NB] inability to speak Spanish.⁵

¹ See Claimant's submission before the Committee on Economic, Social and Cultural Rights, 20 February 2015. p. 5, paras. 31-36.

² Ibid, p. 5, para. 33.

³ Ibid. p. 6, para. 43.

⁴ See Claimant's submission before the Committee on Economic, Social and Cultural Rights. 20 February 2015. p. 6, para. 45.

⁵ See Spain's submission before the Committee on Economic, Social and Cultural Rights-22 May 2015. p. 5.

The State party notes that MBD and his family received “Renta Minima de inserción” (532€ per month) at certain times. The State party indicates that there are 8,000 applications for social housing per year in the Municipality of Madrid and that on average 260 homes become available. The State party additionally argues that the eviction was not a forced eviction by the State because the State was merely mediating a contract between two parties which had expired.

6. The authors contested the eviction before the domestic courts on a number of grounds, including:
 - i) The family had found no alternative housing and would be rendered homeless;
 - ii) The eviction order violates the right to life in article 15 of the Spanish Constitution by not taking into consideration the personal, familial and social consequences of an eviction in their circumstances;
 - iii) The eviction order violates the right to the inviolability of the home under article 18.2 and the right to housing (a principle governing economic and social policy) in article 47 of the Spanish Constitution;
 - iv) The authors’ children are entitled to special measures of protection under both the Spanish Constitution (article 39) and under the Convention on the Rights of Children⁶ (article 27.1); and
 - v) The right to effective protection of rights and interests by the courts under article 24.1 of the Spanish Constitution was violated by the absence of judicial procedure through which the eviction could be contested on the basis of fundamental rights.
7. The First Instance Court No. 37^o of Madrid denied the authors’ application. The Court found that the expiration of the tenancy agreement, or alternatively, non-payment of rent, is grounds for termination of tenancy and eviction and that the grounds on which the authors sought to have the eviction overturned did not fall within the Civil Procedure Act.⁷ A request for reconsideration and revocation was submitted to the same Court No. 37 and this request was dismissed.
8. The authors then filed a *recurso de amparo* with the Spanish Constitutional Court contending that Court No. 37’s eviction order violated articles 15, 18.2, and 24.1 of the Constitution and was contrary to the International Covenant on Economic, Social and Cultural Rights. The Constitutional Court dismissed the *amparo*, finding it to be “inadmissible as disclosing no violation of fundamental rights...warranting the exercise

⁶ Ratified by Spain, 6 December 1990.

⁷ See Judgement of Court of First Instance No. 37 Madrid, *Verbal Judgment 1590/2010* (8 July 2013). p. 1 para. 4.

of the court's authority under article 44.1 of Title III [recurso de amparo constitucional].”⁸

II. State obligations to prevent and respond to homelessness, including human rights obligations of sub-national governments

A. Individual circumstances and structural causes

9. Widespread homelessness and its causes has been a central focus of the Special Rapporteur's research and work in keeping with her mandate.⁹ The Special Rapporteur presented a report to the Human Rights Council in March 2016 (A/HRC/31/54)¹⁰ in which she clarified that homelessness is an egregious violation of the rights to adequate housing and non-discrimination and that it should also be understood as a violation of the rights to life, to security of the person, to health, to protection of the home and family, and to freedom from cruel and inhuman treatment. In her subsequent report to the General Assembly in October 2016 (A/71/310), the Special Rapporteur addressed the importance of understanding homelessness both as a violation of the right to life and of the right to adequate housing.
10. In the Special Rapporteur's view, homelessness has not been addressed with the urgency and priority that ought to be accorded to so severe a violation of human rights. The Special Rapporteur has expressed concern that “moral” explanations of homelessness as personal failures or lack of motivation have often been promoted by governments and accepted by courts, when in fact homelessness results from systemic patterns of inequality, poverty, injustice, marginalization and inadequate measures of social protection. As noted by the former Special Rapporteur on extreme poverty, Magdalena Sepulveda, discriminatory stereotypes “assume that persons living in poverty are lazy, irresponsible, indifferent to their children's health and education” and are portrayed as “authors of their own misfortune, who can remedy their situation by simply “trying harder” ”.¹¹
11. The Special Rapporteur proposed a three-dimensional understanding of homelessness to assist in a better understanding of its human rights dimensions. She proposed that

⁸ See Judgement of Constitutional Tribunal of Spain, Petition No. 5179-2013. 21 February 2014. p. 1 para. 1. “La Sección ha examinado el recurso presentado y ha acordado no admitirlo a trámite, con arreglo a lo previsto en el art. 50.1 (a) LOTC [Ley Orgánica del Tribunal Constitucional], dada la manifiesta inexistencia de violación de un derecho fundamental notable en amparo, violación que, de acuerdo con el art. 44.1 LOTC, es condición para que este Tribunal pueda ejercer dicha tutela.”

⁹ See Human Rights Council resolutions 15/08, 25/17 and 31/09.

¹⁰ All thematic reports of the current and previous Special Rapporteurs on adequate housing are available from: <http://www.ohchr.org/EN/Issues/Housing/Pages/AnnualReports.aspx>

¹¹ See A/66/265 para.7.

homelessness should be understood: (i) as an absence of home in both the physical shelter as well as the social sense; (ii) as resulting from systemic discrimination and social exclusion; and (iii) as defining a group identity linked to the struggle for dignity and rights which should be recognized by governments and courts.

12. Rights claims advanced by those who are homeless are rare and States frequently portray such claimants negatively, as attempts to hold governments responsible for personal failures. The Special Rapporteur notes that in the present case, “moral explanations” are suggested in the State party’s tendency to attribute homelessness to the alleged personal failings of the authors rather than acknowledging structural issues at play such as systemic unemployment and increased poverty across Spain including in Madrid, and the effects of austerity measures.¹²
13. In this regard, Special Rapporteur stated in her report on homelessness that “[t]he common denominator in virtually all structural causes of homelessness is government decision-making inconsistent with human rights — neglecting or failing to respond adequately to the needs of the most disadvantaged in response to crises or economic developments and allowing unregulated market forces to render large numbers of people homeless. Homelessness is created when apparently external structural causes converge with the systemic patterns of social exclusion and discrimination and when governments fail to address new challenges within a human rights framework.”¹³ Assessing compliance with the right to adequate housing in the context of individuals at risk of or experiencing homelessness requires an understanding of how individual experiences of stigma, discrimination and violation of dignity are linked to systemic patterns of marginalization and government neglect. Just as homelessness is a result of the convergence of individual circumstances with systemic patterns, so, in the Special Rapporteur’s view, must effective remedies address both individual needs and the need for strategic, co-ordinated responses by all levels of government and other relevant actors.

B. Access to justice and legal remedies to homelessness

14. Ensuring access to justice for those who are at risk of or living in homelessness is a central obligation of States and a critical component of effective strategies to eliminate homelessness. The Special Rapporteur is concerned, therefore, that in the present case, the authors were apparently denied effective remedies by domestic courts that would have prevented homelessness.

¹² See State party response to the communication before the Committee on Economic, Social and Cultural Rights, 22 May 2015, in which it is noted, among other things, that MBD “has not had an active disposition either in the search for employment or in housing, putting all of the responsibility on public services” and alleges that he did not attend social assistance centres to benefit from assistance after the eviction, such as shelter for NB and the children [unofficial translation from State party’s submission], p. 6.

¹³ See A/HRC/31/54, para. 38.

15. Homelessness is most often understood as a policy issue to be addressed through government social program choices rather than a human rights violation requiring rights-based remedies. The experience of housing insecurity and homelessness as a violation of the right to adequate housing in dignity and security, and the right to life itself, is often obscured. Access to justice for those with lived experience of homelessness is a critical corrective to the tendency to divorce the homelessness from its human rights dimensions.
16. The Special Rapporteur has emphasized in her reports that the judicial branch shares in the obligations of the State to ensure access to justice. She has emphasized that the judiciary must develop its capacity and commitment to adjudicating claims related to homelessness, including where claimants seek remedies requiring positive measures. She has also emphasized, as has the Committee, that States must promote interpretations of domestic law that provide effective remedies to violations of the right to housing and refrain from adopting positions in litigation that deny access to effective remedies.¹⁴
17. The Special Rapporteur has emphasized that all branches of government, including the judicial branch, are bound by the State party's obligation to ensure effective remedies with respect to homelessness and that access to justice in many jurisdictions relies on courts recognizing the inseparable links between the right to housing and other human rights, particularly the right to life.¹⁵ She has recommended that States "conduct a thorough examination of legislation, court practice and public policies to ensure that the right to life is not restricted to a negative rights framework. States must formally recognize that the right to life includes the right to a place to live in dignity and security, free of violence, and ensure access to justice for all victims of violations of the right to life, including those linked to homelessness and inadequate housing."¹⁶
18. Relying on the Committee's general comments and emerging domestic jurisprudence in various countries in her report on homelessness (A/HRC/31/54), the Special Rapporteur provided a summary of key State obligations which include positive obligations to address systemic homelessness and obligations to prevent evictions leading to homelessness:
- (a) States have an immediate obligation to adopt and implement strategies to eliminate homelessness with clear goals and timelines, setting out the responsibilities of

¹⁴ See A/HRC/31/54, para. 92(c).

¹⁵ See A/71/310, para 70.

¹⁶ See A/71/310 para 73. See also CESCR's concerns and recommendations regarding positions taken by Canada in litigation, E/C.12/CAN/CO/4; E/C.12/CAN/CO/5 (22 May 2006), paras. 11(b) and 41.

all levels of government and of other actors, in consultation with and with participation by homeless people.¹⁷

(b) States must combat discrimination, stigma and negative stereotyping of homeless people as a matter of urgency, and provide legal protection from discrimination because homelessness.¹⁸

(c) The prohibition of evictions leading to homelessness is immediate, absolute and is not subject to available resources.¹⁹

(d) Eviction should never proceed without full consultation with those affected, exploration of every alternative, and, where necessary, measures to ensure that adequate alternative housing is available.

(e) States must ensure that every decision or policy is consistent with the goal of the elimination of homelessness and any decision that results in homelessness must be regarded as unacceptable and contrary to human rights.

(f) States have a firm legal obligation to regulate and engage with non-state actors so as to ensure that all of their actions and policies are in accordance with the right to adequate housing and the prevention and amelioration of homelessness.

(g) Access to effective remedies to homelessness must be ensured, including enforcement of obligations linked to the progressive realization of the right to housing and the elimination of homelessness.²⁰

19. Because homelessness is the result of both individual and systemic causes, violations may result from failures to comply with any of the above obligations and effective remedies need to encompass this full range of State obligations. Just as homelessness is a result of the convergence of individual circumstances with systemic patterns, so must effective remedies address both individual needs and the need for strategic, co-ordinated responses by all levels of government and other relevant actors.

C. Human rights obligations of sub-national governments

¹⁷ Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing, para 12; Concluding observations of the Committee on Economic, Social and Cultural Rights on Canada (E/C.12/CAN/CO/4) and (E/C.12/CAN/CO/5).

¹⁸ Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para 35.

¹⁹ Committee on Economic, Social and Cultural Rights, general comment No. 7. See also Wilson, Stuart "Breaking the Tie: Evictions, Homelessness and a New Normality" (2009) 126:2 South African Law Journal.

²⁰ Committee on Economic, Social and Cultural Rights, concluding observations on Canada (E/C.12/CAN/CO/4) and (E/C.12/CAN/CO/5).

20. Communication 5/2015 also raises important questions regarding the responsibilities of sub-national and local governments of the autonomous region and of the Municipality of Madrid for the realization of the right to adequate housing.
21. In her report on the obligations of sub-national governments with respect to the right to housing, presented to the Human Rights Council in 2015 (A/HRC/28/62), the Special Rapporteur observed that because the primary dialogue between international human rights mechanisms and procedures is with national governments, less attention has been paid to the critical responsibilities of local and subnational governments in relation to housing. She emphasized the obligations of States parties to ensure that where responsibilities are allocated to sub-national governments, those levels of government are made fully accountable to international human rights obligations of the State and that adequate resources are provided to ensure that those obligations can be fulfilled.
22. The Special Rapporteur stated that within the existing framework of dialogue between States parties and treaty body monitoring mechanism, “there is room for considerably more engagement with the responsibilities of subnational governments in relation to the right to adequate housing.”²¹ The Special Rapporteur noted that in the context of communications, treaty bodies have addressed the obligations of sub-national levels of government including in cases dealing with eviction and homelessness.²²
23. The Special Rapporteur also emphasized the need for domestic courts to ensure access to effective remedies in circumstances where sub-national governments may have very different policies and programs. She noted, for example, the innovative approach taken by the Constitutional Court of Colombia in one case whereby the Court ordered relevant municipalities to organize a working group to review the housing policies in each jurisdiction, and to develop plans and programmes with direct participation of displaced persons, and with representatives of the National Human Rights Institution.²³
24. Among recommendations made by the Special Rapporteur with respect to the responsibilities of sub-national governments in her report were the following:
- i. The responsibilities of all levels of governments should be clearly delineated and jointly coordinated with ongoing independent review and oversight in order to ensure that jurisdictional overlap does not deny those in need access to necessary services or housing.

²¹ See A/HRC/28/62, para 27.

²² Ibid, para 32. See, for example, Liliana Assenova Naidenova et al. v. Bulgaria (CCPR/C/106/D/2073/2011),

²³ See Constitutional Court of Colombia, *Decision T-585/06*. Available from: www.corteconstitucional.gov.co/relatoria/2006/t-585-06.htm.

- ii. Transfers of responsibility for housing or other programmes from one level of government to another should be accompanied by a clarification of concomitant human rights obligations including requirements of monitoring and accountability.
- iii. States must ensure that local and subnational governments have adequate financial and other resources for the discharge of their responsibilities, with capacity to respond to changing housing needs at the local level, particularly of marginalized and disadvantaged groups.
- iv. States should ensure that the right to adequate housing and related rights are protected in law and applicable to the local and subnational governments. States should guarantee access to justice and effective remedies for violations of the right to adequate housing at the local as well as the national level.
- v. Judicial review of administrative decisions and policies should require consistency with the right to adequate housing and other human rights.

III. Security of tenure as a component of the right to adequate housing

25. Security of tenure is a central component of the right to adequate housing. Elaborating guiding principles to clarify States' obligations in this respect has been central to the mandate as well as to Committee jurisprudence. Obligations to provide security of tenure and protection from forced evictions for tenants in private market rentals, however, have not received adequate attention particularly in circumstances where tenants have been unable to pay the rent. This communication may provide the Committee with an opportunity to clarify State obligations in this regard.

A. Protections from termination of tenancy when a lease expires

26. As noted above, the authors' tenancy was terminated and an eviction was subsequently ordered by the court. This was done on the basis that under the applicable law, expiration of the tenancy agreement is sufficient grounds to terminate a tenancy and proceed with an eviction without consideration of any justification for termination of tenancy, possible consequences of an eviction, alternative means for repayment of rent owed, or assessment of whether it would result in a violation of the right to housing or other human rights.

27. The Respondent State differentiates the circumstances of the present case from the Committee's jurisprudence on "forced evictions" on the basis that the eviction in this case results from the expiration of a rental contract and the state, through the judiciary, is only engaged in mediating between the two private parties to the rental contract.²⁴ In the

²⁴ Respondent State Submission, 22 May 2015.

Special Rapporteur's view, this position reflects a common misunderstanding arising from the term "forced evictions", which has tended to be associated with large scale evictions of entire communities from their land. In fact, under international law, no eviction may be executed by a private party without engaging the state, through the judiciary and, if necessary, the police.

28. Moreover, it is well established that security of tenure must be guaranteed regardless of the type of housing, and whether it is public or private housing.²⁵ Contracts for housing are of a special nature because housing is a human right. States must adopt legislative provisions recognizing the imbalance of power between landlords and tenants in a contractual rental contract. The role of the State and of the judicial branch in enforcing private contracts and mediating private disputes in relation to housing must be exercised consistently with the State's obligation to respect, protect and fulfil the right to adequate housing.
29. States must therefore ensure that security of tenure is guaranteed on the expiration of a tenancy agreement, limiting the circumstances in which the renewal or continuation of a rental agreement may be denied by a landlord to circumstances where such action is reasonable or necessary, such as where the landlord requires the property for personal residential use or where the tenant has unreasonably interfered with the rights of others and consistently failed to respond to attempts to remedy these problems.²⁶ Whether a failure to renew or continue a tenancy for any of these reasons is consistent with the right to adequate housing and other human rights must be subject to effective and independent review by a court or independent tribunal that is accessible, timely and able to give full consideration to the right to adequate housing.
30. While there is considerable variation in the way States have dealt with the expiration of leases, it is clear that measures to ensure security of tenure in these circumstances are feasible. Some countries provide for unlimited leases, including Germany, Austria, the Netherlands, and China.²⁷ In Germany, apart from noncompliance of the tenant, the only legitimate reason a landlord can invoke to terminate the lease is personal occupancy. However, if a court finds that the tenant is more in need than the landlord (i.e. if the landlord has other properties that he or she or his/her relatives can occupy) then their tenancy may be protected.²⁸ In France, tenants have an automatic right to renew their lease upon expiry and a landlord may only terminate the lease if he or she satisfies a court

²⁵ See Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 8.

²⁶ See, for example, *Molusi and Others v Voges N.O. and Others* (CCT96/15) [2016] ZACC 6; 2016 (3) SA 370 (CC) in which the Court rejected the landlord's argument that termination of tenancy on the expiration of a lease is need not be justified on any other grounds.

²⁷ See Kath Scanlon & Ben Kochan. (2011). *Towards a Sustainable Private Rented Sector: The Lessons from Other Countries*, LSE London. For information on China: Ira Gary Peppercorn & Claude Taffin. (2013). *Rental Housing: Lessons from International Experience and Policies for Emerging Markets*. Washington: The World Bank, p.81.

²⁸ See Peppercorn & Taffin, 2013, p. 92; German Civil Code, Section 575, see translation: http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p2320.

of a “serious or legitimate” reason not to renew a lease.²⁹

B. Obligation to implement positive measures to assist tenants who are unable to pay the rent

31. States also have an obligation to take necessary measures to ensure security of tenure and, where necessary, alternative housing when tenants find themselves unable to continue to pay rent in full. Such measures may include providing necessary financial assistance to the tenant to pay the rent, providing a subsidy to the landlord to reduce the rent to a level that the tenant can afford, or securing alternative subsidized housing in a reasonable location.

32. This obligation flows from the principle enunciated by the Committee in general comment No.4 and reaffirmed in the Committee’s views in *IDG v Spain*: that “the inherent dignity of the human person” from which the rights in the Covenant are said to derive requires that ... the right to housing should be ensured to all persons irrespective of income or access to economic resources.”³⁰ Guiding principles affirmed by the previous Special Rapporteur, Raquel Rolnik, with respect to security of tenure for the urban poor and the right to in situ solutions apply to private market tenancies. The Special Rapporteur stated that:

The entitlement to secure tenure in situ is, however, not absolute and can be rebutted in exceptional circumstances that justify eviction, consistent with international law obligations concerning, inter alia, due process, reasonableness and proportionality and the exploration of all feasible alternatives. When such circumstances exist, States must guarantee safeguards to ensure evictions and resettlement fully respect the human rights of those affected, including through access to alternative housing.³¹

33. Article 8(4) of the Optional Protocol reinforces the obligation of States to take reasonable measures to protect security of tenure for tenants who are at risk of homelessness because of poverty or loss of income.

34. In the Special Rapporteur’s recent report on the financialization of housing (A/HRC/34/51) she stated that in her view, the “all too common practice of evicting

²⁹ See Loi n° 89-462 du 6 juillet 1989 tendant à améliorer les rapports locatifs et portant modification de la loi n° 86-1290 du 23 décembre 1986 - Article 15, see:

<https://www.legifrance.gouv.fr/affichTexteArticle.do?cidTexte=JORFTEXT000000509310&idArticle=LEGIARTIO00031009733&dateTexte=&categorieLien=id>. See also, Fanny Cornette. (n.d.). TENLAW: Tenancy Law and Housing in Multi-Level Europe. Tenant’s Rights Brochure: France, retrieved from: http://www.tenlaw.uni-bremen.de/Brochures/FranceBrochure_09052014.pdf.

³⁰ See Committee on Economic, Social and Cultural Rights, general comment 4 para 7; and Committee on Economic, Social and Cultural Rights Communication No. 2/2014, *IDG vs. Spain*, para 13.3

³¹ Guiding principles on security of tenure for the urban poor, A/HRC/25/54 at para. 7.

people of their homes as a remedy for outstanding mortgage or rental arrears should be subject to more rigorous human rights review than it has received to date from domestic courts and international human rights bodies.”³² She noted that the Committee did not need to consider this question in the *IDG* case because the author was able to remain in her housing, but expressed the hope that it would be clarified in future jurisprudence.

C. Obligation to ensure access to justice in reviewing termination of tenancy and eviction

35. Further to the Committee’s views in *IDG v Spain*, on the importance of access to an effective remedy, the Special Rapporteur is of the view that access to justice in the case of any termination of a tenancy agreement with a private landlord requires access to an independent review of whether such termination is consistent with the right to housing and other human rights. The Special Rapporteur has found that States have too often misinterpreted the requirement, articulated in general comment No. 7 that “[t]he prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.” Access to effective remedies in the context of forced eviction must ensure protection of the right to adequate housing and other human rights. Any termination of tenancy or eviction must be subject to effective judicial review for compliance with the right to housing, the right to life and other fundamental human rights.

IV. Forced evictions and protecting the right to adequate housing in the context of austerity measures

36. As noted above, the Special Rapporteur has affirmed that “[t]he prohibition of evictions leading to homelessness is immediate, absolute and is not subject to available resources.”³³ The obligations of States to prevent any evictions resulting in homelessness extend to regulating the relationship between private landlords and tenants so as adequately protect the right to adequate housing. As stated in the Special Rapporteur’s 2016 report, States must take all appropriate measures, to the maximum of available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”³⁴

³² See A/HRC/34/51, para. 61

³³ See Committee on Economic, Social and Cultural Rights, general comment No. 7. See also Stuart Wilson, "Breaking the Tie: Evictions, Homelessness and a New Normality" (2009) 126:2 South African Law Journal.

³⁴ See A/HRC/31/54, para 49(d).

37. While positive measures are subject to a standard of reasonableness and the maximum available resources, the Special Rapporteur has emphasized that measures to prevent homelessness must be prioritized as addressing the needs of those in the most desperate circumstances – needs which must be met in order to protect not only the right to housing but also the right to life.
38. In her analysis of causes of homelessness in many States, the Special Rapporteur has become particularly concerned about the pattern of responses to the 2008 financial crisis and the design of austerity measures. She referred in her report on Homelessness to the response to her questionnaire on this subject from the Ombudsperson for Spain (*Defensor del Pueblo*) who noted that: “According to the figures from Caritas Spain, there were 40, 000 people living in homelessness in 2014. The National Institute of Statistics provides a figure of 23, 000 living in homelessness. The principle causes for homelessness are economic in nature. This is to say, the lack of economic resources to face the cost of living in dignity. In the opinion of the Ombudsman, public interventions have not been sufficient to satisfy the social demand that currently exists in Spain, aggravated by the economic crisis which has led to a greater amount of housing foreclosures and evictions.”³⁵
39. In her report on the financialization of housing, the Special Rapporteur noted that austerity measures after the 2008 financial crisis caused a massive rise in homelessness in several European countries but that widespread homelessness did not occur in countries where governments were careful to ensure that reactive measures did not undermine social protection. In the view of the Special Rapporteur, States have too often applied cuts social protection and housing for the most marginalized groups during times of economic crisis and austerity when in fact, their obligation in times of high unemployment and increased poverty is to prioritize measures necessary to address the needs of those who have suffered loss of income and employment and are therefore at risk of homelessness. Such positive measures are required particularly for at-risk groups such as families with children and persons with disabilities.

³⁵ See response by the Defensor del Pueblo to questionnaire elaborated by the Special Rapporteur on adequate housing requesting inputs for the preparation of her report on homelessness and the right to housing, (2015) p.1, para. 4. Available from: <http://www.ohchr.org/EN/Issues/Housing/Pages/Homelessnessandhumanrights.aspx>. “Las principales causas de la situación de las personas sin hogar son de tipo económico. Es decir, la falta de recursos económicos para afrontar el coste de una vivienda digna. Desde la perspectiva del Defensor del Pueblo, las actuaciones públicas para hacer frente a este problema no son suficientes para atender la demanda social de viviendas existente en España, agravada por la crisis económica, que ha producido un gran aumento de los desahucios hipotecarios. Las actuaciones públicas consisten esencialmente en la construcción y adjudicación de viviendas sociales, y en la concesión de ayudas económicas.”