

Model Emergency Housing Legislation

Protecting the Right to Housing
during COVID-19

In collaboration with:



Introduction

This model emergency housing Act developed out of a body of work on the right to housing by the Open Society Initiative for Europe and the Open Society Justice Initiative. Starting in 2015, these organizations supported efforts to ensure better rental housing conditions and policies in Europe and, through strategic litigation and advocacy, promoted the use of European human rights and EU consumer law to prevent evictions in mortgage foreclosure cases.

The advent of COVID-19 made more urgent the need to enforce the right to housing. People were directed to stay home at the same time that many lost the source of income that enabled them to pay for their home. Individuals and families in precarious living situations, or without housing at all, were particularly susceptible to the fast-spreading and often deadly virus. Some states responded by passing emergency relief measures, but others did nothing. Evictions continued in most parts of the world during the first wave of the COVID-19 pandemic, both in states that did not pass relief measures, and even, to some degree, in those that did. This was largely because relief measures passed by states were incomplete, sometimes forming distinctions that made little objective sense. For instance, many governments moved to limit rental evictions while doing nothing to protect owners of mortgaged housing, or vice versa. In most states, people in informal and temporary settlements, migrant and refugee housing, people with disabilities, and/or those facing homelessness, were left without any protection. Moreover, some state measures to prevent evictions involved voluntary agreements that were not legally enforceable. Lastly, most of the measures passed during the first wave of the pandemic were scheduled to end in a matter of months, which provided no security for the second wave of COVID-19 a few months later, or for the economic crisis that was to follow the COVID-19 pandemic. (For a snapshot of various state measures, see the Open Society Justice Initiative’s briefing paper, available [here](#).)

Recognizing the need for a comprehensive approach to protect the right to housing, we formed a steering committee to develop a draft model housing Act. Steering committee members included:

- Maria Jose Aldanas, European Federation of National Organisations Working with the Homeless (FEANTSA)/Housing Rights Watch
- Commissioner Mohamed Shafie Ameerma, South African Human Rights Commission
- Marguerite Angelari, Open Society Justice Initiative
- Renata Cuk, Open Society Initiative for Europe
- Cecilia Forrestal, Community Action Network
- Facundo Di Filippo, Centro de Estrategias y Acción por la Igualdad (CEAPI)

- Leilani Farha, former U.N. Special Rapporteur on the Right to Housing, Global Director of The Shift, and 2020 Open Society Fellow
- Padraic Kenna, the National University of Ireland Galway Centre for Housing Law, Rights and Policy

Significant contributions were also received from Fiona McPhail and Scott Blair on housing for migrants, asylum seekers, and refugees. Assistance with the development of this legislation was provided by: Georgiana Epure, Sam Freeman, Julieta Perucca, Peacemore Mhodi, Yuri Ramkissoon, Guadalupe Granero Realini, Shanelle Van Der Berg, and Jillian Winkler.

The steering committee's aim was to provide activists and lawmakers with sample legal provisions that could be used to ensure the right to housing during the COVID-19 pandemic and the economic crisis following it. We based this draft model Act on elements of actual emergency housing legislation, submissions from civil society and community groups to the UN Special Rapporteur on Housing and resulting reports and recommendations, and our individual experiences working with affected communities in various parts of the world. We combined provisions drawn from a range of existing legislative measures, but this draft model Act goes beyond most existing legislation by including provisions to protect those facing homelessness, people with disabilities, and people living in temporary encampments and housing for migrants, asylum seekers, and refugees. It is our hope that this model Act will serve as a catalyst for comprehensive legislation to ensure that the right to housing is protected for all people at this critical time.

For more information about this model Act or to reach members of the steering committee, please contact Cecilia Forrestal at cecilia@canaction.ie

Proposed Model Emergency Act

An Act to protect the right to housing in the context of the COVID-19 crisis and its aftermath.

Preamble:

Whereas the global COVID-19 pandemic poses considerable risk to the health and well-being of all people;

Whereas access to adequate housing is fundamental to good health, security, human dignity, and to life itself;

Whereas the COVID-19 pandemic has created housing-related emergencies and demonstrated that access to adequate, secure, and affordable housing is necessary for the prevention of the disease and its spread;

Whereas economic hardship as a result of the COVID-19 pandemic has caused housing insecurity for many households and may be contributing to homelessness;

Whereas the COVID-19 pandemic has exposed the need for urgent legal measures to ensure that all inhabitants can access adequate, secure, and affordable housing during the COVID-19 pandemic and in its economic consequences;

Recognising that housing is a fundamental human right defined in public international law as the right to live in peace, security, and dignity, and that housing is only adequate if it offers security of tenure; access to services, including water, sanitation, and health care; and if it is affordable, in an appropriate location that is culturally relevant;

Recognising that the right to housing is indivisible and interdependent with other human rights, including the rights to life, dignity, health, right to work, security of the person, and equality and non-discrimination, and these rights should be interpreted to the greatest extent possible in such a way as to facilitate the full protection of the right to housing;

Recognising further the right to be free from housing discrimination based on race and colour, indigeneity, ethnic origin, migrant status, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, economic and social situation, or other status;¹

Recognising that in the absence of a regulatory framework or enforcement mechanisms, all financial actors must nevertheless comply with applicable human rights standards;

1 UN CESCR, General Comment No. 20, UN Doc. E/C.12/GC/20.

Recognising that every State and its constituent parts has an immediate obligation to ensure that the right to housing and its minimum core obligations are met, and to take both immediate and progressive steps, to the maximum of their available resources, to achieve the full realization of the right to adequate housing, by all appropriate means, including particularly the adoption of legislative measures;²

Recognising the urgent measures required for improved housing outcomes are best achieved through cooperation among all orders of government and within and between government departments and all stakeholders, including inter alia: housing providers, landlords, mortgage lenders, local communities, indigenous peoples and their representatives, and civil society organizations.

Purpose:

In the context of the COVID-19 crisis and its adverse economic effects, the purpose of this emergency Act is to ensure immediate access to adequate, secure, and affordable housing for those in need, and to prevent evictions, in a manner that is consistent with international human rights law. Nothing in this Act shall diminish any existing human rights and protections.

Duration:

This emergency Act shall be effective immediately and shall continue for the duration of the pandemic and until such time as COVID-19 related government supports are no longer being provided to any natural or legal persons, whichever occurs later.

2 Guidelines for the Implementation of the Right to Adequate Housing, para 16(b) “Courts should adopt interpretations of domestic law that are consistent with the right to housing when exercising judicial review and Governments should promote such interpretations, including in pleadings in court cases.”

Section I: Protection from Eviction

1. For the purposes of this Act, “forced eviction” is understood as the permanent or temporary removal against their will of individuals, households, and/or communities from the homes and/or land which they occupy, without access to appropriate forms of legal or other protection and/or without the provision of alternative housing that is proximate, adequate, affordable, and agreed to by the residents.³
2. For the purposes of this Act, “eviction” refers to the use of judicial means to remove a resident from a dwelling unit, including but not limited to issuing a notice to vacate or other termination or eviction notice; filing, serving, or otherwise initiating judicial eviction proceedings; and seeking or causing an order for the physical eviction of a resident or residents to be executed.
3. Forced evictions are strictly prohibited at all times, including of informal settlements and encampments.
4. Evictions are strictly prohibited for the duration of this Act, including those scheduled prior to the commencement of the COVID-19 pandemic, except in cases of domestic or household violence. In this regard:
 - i. No eviction notice shall be served or executed for the duration of the Act. Any attempts to serve such notices are void and unenforceable and subject to the penalty provided in Section X, subsection 6.ii. of the Act.
 - ii. No court, tribunal, or adjudicative body shall accept any eviction case for filing, or hear or decide any pending eviction case, except in cases of domestic or household violence.
 - iii. Where an eviction is ordered due to domestic or household violence, all efforts should be made to ensure the perpetrator, if facing homelessness, has access to emergency accommodation.

Section II: Rental and Mortgage Payments in Formal and Informal Sectors

1. Rent levels shall remain frozen for the duration of the Act.
2. Rental agreements, formal and informal, shall not be cancelled by lessors for the duration of the Act.
3. No landlord or mortgagee shall impose or collect any fee upon a tenant of residential premises based on the late or non-payment of rent or mortgage coming due within the duration of the Act. Any such fee previously collected during the COVID-19 pandemic shall be refunded.

3 UN Committee on Economic, Social and Cultural Rights, General Comment No. 7, 20 May 1997, UN Doc. E/1998/22 para 3.

4. Debt relief programmes that prioritize household economic security and security of tenure shall be immediately put in place where they do not already exist. There shall be a cap on any repayment schemes such that total housing costs for the tenant or mortgagor including debt repayment must never exceed 30% of net disposable income of the household.
5. Mortgagors who face difficulties in making repayments must be able to return properties to mortgage lenders and in so doing be fully cleared of their outstanding mortgage or associated debt.⁴
6. Mortgage lenders are prohibited from encouraging or unduly influencing mortgagors to “voluntarily surrender” occupation of their homes.

Section III: Essential Housing Services

1. Regardless of the place of habitation, everyone shall be provided with access to the following essential housing services: adequate sanitation facilities and products including toilets, water, soap, sanitizers, and bathing facilities.
2. Basic services that enhance safety and security in informal settlements, especially for women, must be maintained.
3. At no time shall essential housing services be suspended or denied because of informality, or lack of payment, late payment, or underpayment, due to COVID-19, including water, electricity, heating, and phone.

Section IV: Support for Housing Providers

1. Emergency financial compensation or assistance should be considered and where possible extended, for the duration of this Act, to lessors in both formal and informal sectors who experience a substantial revenue decline, conditional on their offering of reduced rental payments to tenants.
2. This section shall not apply to, inter alia:
 - i. Real estate investment trusts
 - ii. Private equity firms including their subsidiaries and holding companies
 - iii. Asset management firms
 - iv. Investment banks
 - v. Corporate landlords or personal landlords owning, leasing, or otherwise holding 10 or more residential properties or 1,500 sq. metres.

4 Such as the Romanian Act in 2020: <https://credere.ro/the-new-datio-in-solutum-law-in-romania-a-feasible-solution-by-which-debtors-can-obtain-the-re-balancing-of-credit-agreements/>.

Section V: Public Housing Assets

1. Public housing assets (including land) shall not be sold for the duration of the Act.
2. Immediate steps shall be taken to expand the pool of public housing assets to be used for social and affordable housing in keeping with housing need.
3. For the duration of this Act, government authorities shall have a pre-emptive right to purchase residential housing to further the purposes of this Act. This right may also extend to commercial buildings that will be used for temporary or emergency housing in the short term, and conversion into affordable and social housing in the long term. Once purchased, these public assets must only be used as social and affordable housing. The purchase and management of public housing assets shall be undertaken in consultation and collaboration with national and local public housing providers and community housing associations.

Section VI: Homelessness

1. For the purposes of this Act, homelessness is defined as those living on the streets, in shelters or other temporary institutions, in motor vehicles or other places unfit for human habitation, in violent households, and in households that are overcrowded or lacking security of tenure.
2. On an urgent and priority basis, immediate access to safe, secure, and dignified emergency accommodation shall be guaranteed to anyone who is homeless, with all necessary supports and without discrimination based on race and colour, indigeneity, ethnic origin, migrant status, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, economic and social situation, or other status.
3. In this regard:
 - i. Those who are homeless shall not be required to reside in emergency accommodations where they deem such accommodations to be either unsafe or inadequate to meet their needs.
 - ii. Those living in temporary accommodations such as hotels or other emergency accommodations shall not be relocated or evicted without their consent and without access to alternative adequate accommodation.
 - iii. In meaningful consultation with those experiencing homelessness, immediate steps shall be taken to secure long-term housing options with adequate supports for people living in homelessness, including encampments, using the maximum of all available resources. These steps may include: the acquisition of vacant units and the repurposing of buildings in compliance with Section V Subsection 3. of this Act.
4. Authorities shall not use laws or bylaws pertaining to “loitering” or “nuisance” to harass and criminalize people living in homelessness.

5. Those who are homeless shall be exempt from lockdown provisions and shall not be fined for inter alia, non-adherence to curfews or mask requirements.

Section VII: Informal Settlements/Encampments

1. All residents of informal settlements shall be provided with non-discriminatory access to:
 - i. adequate, affordable, and proximate supply of water, toilets, showers, sanitation services, soap, hand sanitizer, disinfectants, masks, and personal protective equipment as needed. In communities with limited access to local water supply, functioning water tankers and the equipment to create boreholes must be urgently provided and accompanied with training for community utilisation;
 - ii. public and private health services proximate to their communities where testing and treatment for COVID-19 is free of charge.
2. Adequate resources shall be provided directly to informal communities to:
 - i. establish safe quarantine locations for residents who test positive for or show symptoms of the virus;
 - ii. establish or strengthen local community structures so that they can effectively work alongside governments in addressing the pandemic.
3. Those living in informal settlements or encampments shall not be relocated or evicted without their consent and without access to alternative adequate accommodation.
4. Care should be taken to ensure that lockdown provisions do not affect essential services in informal settlements/encampments that are commonly provided by the local informal economy, such as inter alia, distribution and reselling of food, water, wood and energy, and hygienic articles, or provision of emergency transportation, and care for children, persons with disabilities, older persons, and those with illnesses.
5. Where abiding by lockdown provisions shall render a household in an informal settlement or encampment vulnerable to socio-economic deprivation, every effort must be made to mitigate these situations.
6. Meaningful and regular consultation with residents of informal settlements regarding COVID-19 transmission, treatment, and related policies shall be established.
7. Education and training on COVID-19 safety measures and assisting essential service personnel in providing required services shall be made available for residents of informal settlements/encampments.

Section VIII: Housing for migrants, asylum seekers, and refugees

1. Any prohibitions against providing housing based on immigration, asylum, or refugee status or lack of such status are hereby suspended. Private and social landlords shall not be prohibited from providing assistance, by way of accommodation or otherwise, to those persons who are subject to immigration control. Migrants, asylum seekers, refugees, and persons who have so far failed to secure refugee status, shall be permitted to consult local housing authorities for advice and assistance.
2. Accessing the housing advice and assistance referenced in Section VIII, subsection 1, shall not preclude access to the financial support that would otherwise be received based on one's status as an asylum seeker or refugee.
3. Public authorities must prevent people who are temporarily accommodated in hotels and emergency accommodation from being evicted without alternative accommodation being in place.

Section IX: Institutional Investors in Real Estate, Real Estate Sector, and Developers

1. COVID-19-related stimulus and economic support packages shall not be extended to real estate investment trusts, institutional investors in residential real estate, and/or corporate landlords, owning more than 10 units or to companies that hold offshore accounts or accounts in OECD designated tax havens.
2. COVID-19-related stimulus packages directed to the real estate and construction sector shall be conditional on the building of adequate, affordable, and environmentally sustainable housing. An adequate percentage of units must be available as social housing, calculated proportionate to publicly identified housing need.
3. Institutional investors, and real estate developers who pursue real estate development projects, shall conduct human rights impact assessments and adjust the project to ensure that it is human rights compliant.⁵

5 Ruggie Guiding Principles on Business and Human Rights, principle 18.

Section X: Implementation and Enforcement

1. Minister to Implement

- a. The implementation and enforcement of this Act shall be the responsibility of the Minister responsible for housing or equivalent.

2. Sub-national Appointments

Each sub-national government shall also appoint a public authority to oversee the implementation of this Act at the local level.

3. Public Awareness

The legislature shall fund a promotional campaign for this Act, to ensure that all those who are affected by the pandemic are aware of its provisions.

4. Implementation Strategy

- i. The State shall adopt and implement an emergency, rights-based housing strategy (EHS) in the context of COVID-19 in consultation with all orders of government, affected groups, and relevant stakeholders.
- ii. This Act shall form the basis of the EHS.
- iii. The EHS shall include clearly defined and measurable goals, identify resources to be allocated, and clarify the responsibilities of different levels of government and the time frame for implementation. The development of the EHS shall not preclude the immediate application of this Act.

5. Public Progress Reports

- i. The Minister is responsible for providing monthly progress reports to the legislature on each of the areas outlined in this Act. This report shall be made publicly and widely available.

6. Access to Effective Legal Remedies

- ii. Immediately upon the adoption of this Act, and no later than five days thereafter, the Attorney General's Office or the Minister of housing shall appoint a judicial or quasi-judicial mechanism through which claims may be brought regarding violations of this Act and for which effective legal remedies can be sought. For the purposes of this Act, the mechanism shall be named 'Emergency Housing Tribunal' (EHT).
- iii. Remedies for violations of the Act shall include but not be limited to: rendering null and void eviction notices, overturning eviction orders, restoring possession, access to basic services, specific performance, and awarding damages, costs, and expenses.
- iv. Where a claim raises matters falling under criminal law, the EHT may refer claims to competent prosecutorial authorities.

- v. The EHT may receive complaints regarding non-compliance with an order. The EHT shall remain seized of a claim until such time as the order has been implemented.
 - vi. The EHT shall be provided with sufficient resources to adjudicate claims. Resources shall also be made available to claimants who do not have sufficient resources to file such claims.
 - vii. Proceedings before the EHT may be brought by individuals or on behalf of individuals or groups of individuals. Where submitted on behalf of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.
 - viii. Where a proceeding related to foreclosure or eviction, or for relief thereof, occurs in a court, tribunal, or other mechanism outside of that responsible for enforcing this Act, the provisions of this Act shall be considered and, where appropriate, applied.
- 7. Offences**
- i. Non-compliance with any order under Section X(6)(ii) shall constitute a criminal offence.
 - a. Penalties or other sanctions for non-compliance shall be determined in line with domestic sentencing guidelines, and reflect the nature of the potential offences, taking into account egregiousness, recklessness, and/or whether it constitutes a systemic pattern of behaviour.

Section XI: Monitoring

In conjunction with affected groups, the State shall develop adequate monitoring mechanisms to ensure that this Act is implemented comprehensively and with full effect. This shall include monthly public statements of progress, presented to the legislature.

The Minister and subnational appointees shall meet regularly and not less than bi-monthly to review progress on each of the areas outlined in this Act. Other stakeholders who shall be included in these meetings include but are not limited to: civil society organizations including community housing associations, National Human Rights Institutions, tenants, mortgagors, and relevant private sector actors.

All legally mandated monitoring bodies, including National Human Rights Institutions, should have all information relating to the implementation of the Act provided in a timely manner, upon request.