

Protecting the Right to Housing during the COVID-19 Crisis

PREFACE

The Open Society Justice Initiative promotes human rights and builds legal capacity for open societies using a variety of tools, including strategic litigation, legal empowerment, advocacy, and research. For the past five years, the Justice Initiative's Economic Justice Project¹ has focused on promoting the application of European human rights and consumer law to prevent evictions resulting from mortgage default.

With the spread of COVID-19 and its economic consequences, even more families and individuals face the risk of losing their homes through eviction. In examining the actions States have taken to help people stay in their homes during the COVID-19 crisis, it became apparent that States were taking a piecemeal approach, with some protecting people in rented housing but not those in mortgaged housing, while other States were protecting mortgaged housing but not rental housing. In addition, some States passed laws to prevent evictions while others simply relied upon voluntary agreements that were not legally enforceable. Further, the majority of these measures have expired or are scheduled to expire by the end of the year.

This briefing paper highlights the patchwork approach that States across the world have taken in order to protect the right to housing during the COVID-19 crisis, and examines the need for more comprehensive emergency legislation to prevent evictions during a global pandemic.

To provide activists and legislators with a blueprint for establishing basic legal provisions to ensure respect for the right to housing during the COVID-19 pandemic and the economic crisis that has ensued, the Justice Initiative, in collaboration with leading housing rights experts, has developed [model emergency housing legislation](#). States are strongly urged to consider implementing legislation to protect the right to housing during the current crises.

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INTRODUCTION

The global COVID-19 crisis has proven beyond doubt that secure, safe, and adequate housing is essential for people's health and safety. To control the spread of COVID-19, people across the globe have been urged or required to stay at home. This seemingly simple policy has revealed just how dependent the rights to life, human security, health, and dignity are on access to adequate housing.

At the same time, the COVID-19 pandemic and the resulting economic crisis have put a large number of people in a precarious situation in which they are struggling to meet their housing costs and are vulnerable to homelessness. COVID-19 has fully exposed, and has the potential to deepen, the global housing crisis. For years, this crisis has been characterized by a severe lack of affordable housing, weak tenant protections, limited social or public housing, and inadequate housing for migrants and asylum seekers. Abusive mortgage lending practices and the failure to regulate the financialization of housing have consolidated a system that reproduces housing precariousness and homelessness.

Soon after the World Health Organization declared COVID-19 a global pandemic in March 2020 and some countries went into lockdown, the then United Nations Special Rapporteur on the right to adequate housing, Leilani Farha, issued a series of COVID-19 Guidance Notes to protect the right to housing.² This briefing paper highlights the most important recommendations in those Guidance Notes and provides a snapshot of the most common measures that States adopted at the beginning of the crisis to keep people in their homes. These common measures include: eviction bans, mortgage payment deferrals, protection of tenants in rental housing, and addressing the housing needs of people living in homelessness and informal settlements, as well as those of migrants and asylum seekers.³

The response to the COVID-19 crisis could have been a watershed moment for housing justice. Yet, as the current UN Special Rapporteur on the right to adequate housing, Balakrishnan Rajagopal, highlights in his latest report, in spite of the pandemic, "housing is not yet seen as a life-or-death issue."⁴ Measures that were considered impossible before the pandemic—such as providing shelter for nearly all people sleeping rough in large cities, freezing rent prices, and ensuring access to water and sanitation facilities in informal settlements—became a reality in some jurisdictions for at least a short period of time. Some States have shown that with an adequate mobilization of resources and political will, they can at least temporarily house people who are homeless, provide water and sanitation services to those without, and prevent people from being evicted or losing their homes.

Nonetheless, a piecemeal approach was taken domestically and recurring issues that threaten secure housing have emerged in most States globally. In the face of the pandemic, governments suddenly saw the holes in their housing systems and tried to close up some of the most urgent and immediate gaps. Some States

put homeless people in hotels. Some provided water and sanitation to informal settlements. Some States protected people at risk of eviction in rented housing and not mortgaged housing. Some States passed laws to allow for mortgage payment postponement, whereas others did not or simply relied upon voluntary agreements that were not legally enforceable. Some did nothing at all. But regardless of the approach taken, the majority of these measures have expired or were scheduled to terminate by the end of 2020 despite the near-certainty of COVID-19's continued spread.

In providing an overview of the most common measures that States undertook to protect people from losing their homes during the COVID-19 crisis, this paper emphasizes the need for comprehensive emergency housing legislation. [A model of such emergency legislation](#) has been developed by the Justice Initiative in collaboration with leading housing experts from different regions of the world. We hope that this briefing paper will give context to that model statute.

This paper has a threefold structure. Section I provides a general summary of the most important recommendations of the UN Special Rapporteur on the right to adequate housing. Section II looks at how some States respected the spirit of the UN Special Rapporteur's recommendations, and the Conclusion highlights some key questions for consideration when developing and researching emergency housing measures. Recommendations on how States can best protect the right to housing are offered throughout this paper by citing the COVID-19 Guidance Notes issued by former UN Special Rapporteur on the right to adequate housing in the. Comprehensive recommendations regarding the protection of the right to housing during the COVID-19 crisis can also be found in [the model emergency legislation](#) that the Justice Initiative developed in collaboration with leading experts in the field.

METHODOLOGY

This paper focuses on the most common emergency measures that States⁵ adopted between March and June 2020 to protect the right to housing in the context of the COVID-19 crisis. It looks at measures aimed specifically at protecting individuals without homes, with inadequate homes, or at risk of losing their homes, whether rented or mortgaged, rather than examining indirect forms of protection for individuals, such as general income support schemes.

The State measures cited in this paper are based on open source information from both primary sources, such as legislation, and secondary sources, such as media, NGO and corporate reports. The selection of the States cited in this paper is mainly based on information available from civil society and government reports⁶ made available to the UN Special Rapporteur on the right to adequate housing to inform his July 2020 report “COVID-19 and the right to adequate housing: impacts and the way forward.”⁷ Notably, the legislative measures cited in this paper are for illustrative purposes only; they are not exhaustive, nor definitive, and may not reflect the most up to date version of the adopted laws. Therefore, the tables included in this paper should not be read as scorecards.

While examining the implementation of the adopted measures is important, doing so would go beyond the scope of this briefing paper, which focuses on mapping the most common emergency measures that States adopted in the first four months of the COVID-19 pandemic, without assessing the effectiveness of the measures, nor attesting to their full implementation.

KEY OBSERVATIONS

To protect the right to housing during the pandemic, States adopted a piecemeal approach. Recurring issues that threaten secure housing have emerged in States across continents. In order to adequately protect the right to housing for everyone, States need to adopt comprehensive emergency housing legislation.

The most common types of measures that States have adopted during the COVID-19 crisis in order to protect the right to housing are:

Bans on evictions

Protection of tenants in rental housing

Mortgage payment deferrals

Protection of residents in informal settlements

Protection of people living in homelessness

Protection of migrants

Protection of asylum seekers

Most measures have targeted tenants and homeowners, especially through eviction bans and mortgage payment deferrals. Despite the reality that residents in informal settlements, homeless people, migrants, and asylum seekers are facing a higher vulnerability, their housing needs have been largely overlooked.

The form (mandatory or voluntary), duration, and degree of protection (depending on eligibility criteria) offered by these measures vary greatly across States, and in some cases within States. In general, the measures do not fully respect the spirit of the COVID-19 Guidance Notes for the protection of the right to housing.

Most measures have been adopted for the duration of the “state of emergency,” as defined by States’ laws. Many have already expired or are about to expire by the end of 2020.

In numerous States, eviction moratoria apply only to tenants in public or/and private rental housing, but not mortgaged housing.

While some States took unprecedented measures to provide accommodation for people living in homelessness, there is a lack of systematic measures to transition them into permanent housing.

SECTION I : GUIDANCE FROM THE UN SPECIAL RAPPORTEUR ON THE RIGHT TO ADEQUATE HOUSING

Early in the pandemic, as housing became the frontline defense against COVID-19,⁸ the 2014-2020 UN Special Rapporteur on the right to adequate housing, Leilani Farha, issued five COVID-19 Guidance Notes for States to protect the right to housing, highlighting that, “The right to adequate housing is not subject to derogation in times of emergency. Limitations to this right are only permissible as determined by law ... and solely for the purpose of promoting the general welfare in a democratic society.”⁹

Those five COVID-19 Guidance Notes focus on:

- **Prohibition of evictions**, for anyone, anywhere and for any reason, highlighting that forced evictions and evictions that result in homelessness are a violation of international human rights law;¹⁰
- **Protecting renters and mortgage payers**, based on three principles: an equitable share of the burden of the response to the pandemic across society; preventing renters’ and homeowners’ excessive burden with housing related debt; and a proportionate burden on banks, private landlords, and financial actors according to their resources;¹¹
- **Protecting residents of informal settlements and encampments**, highlighting their particular vulnerability in contracting the virus due to lack of access to water or sanitation, over-crowding, and the constant threat of eviction;¹²
- **Protecting those living in homelessness**, emphasizing that homelessness is a prima facie violation of human rights and that, in the context of the COVID-19 crisis, a lack of access to adequate housing is not only a potential death sentence for homeless people, but also puts the broader population at risk;¹³
- **Protecting housing from financialization and building back a better future**, noting that as a result of COVID-19 the amount of distressed real estate is likely to increase. This provides investors with a growing pool of “assets” that can be purchased at low cost, thus profiting from the pandemic’s impact at the expense of people’s access to affordable housing.¹⁴

Each Guidance Note comprises a set of specific measures for States to adopt, with an emphasis on ensuring access to justice and effective remedies, as well as on the effective monitoring of the implementation of the measures. The following section reviews the most common measures that States undertook in the first four months of the pandemic and assesses their compatibility with the COVID-19 Guidance Notes.

SECTION II

The structure of this section is based on seven categories of housing vulnerability: people at risk of eviction and forced eviction, tenants in rental housing, mortgage homeowners, residents in informal settlements, people living in homelessness, migrants, and asylum seekers. Each sub-section highlights some key recommendations from the COVID-19 Guidance Notes to protect the right to housing, and contrasts them against the most common State practices. For the complete list of recommendations, see the text of the COVID-19 Guidance Notes referenced at the end of this paper.

EVICITION BANS

Evictions are not only inconsistent with the “stay home” policy, but forced evictions are a violation of international human rights law, including the right to housing, as are any evictions that result in homelessness.¹⁵

Leilani Farha, UN Special Rapporteur on the right to adequate housing, 2014-2020

In response to the escalating economic insecurity that families and individuals have been facing due to the COVID-19 crisis, which makes it difficult for them to meet housing costs, numerous States have adopted emergency bans on evictions—also known as eviction moratoria—in order to protect individuals from losing their homes. Across the globe, eviction moratoria vary greatly in form, length, and degree of protection, often contradicting the spirit of the COVID-19 Guidance Note on the prohibition of evictions, which calls for a temporary ban on all types of evictions, be they with or without the provision of, and access to, legal forms of protection.¹⁶

COVID-19 Guidance Note key recommendations and State practices

Declare an end to all evictions of anyone, anywhere for any reason, including for non-payment of rent, rental arrears, mortgage payment default, and utility payment arrears.¹⁷

- Numerous States banned evictions during the first four months of the pandemic. Figure 1 illustrates the action that some States have taken, at some point between March and June 2020, in order to protect people from being evicted from private rental housing.

Figure 1. Bans on eviction from private rental housing adopted between March – June 2020¹⁸

The list of countries cited in this table is for illustrative purposes only. This list is not exhaustive, nor definitive.

	NATIONAL LEGISLATION	SUB-NATIONAL LEGISLATION	NO BAN
Albania	✓		
Argentina	✓		
Australia		✓	
Austria	✓		
Belgium		✓	
Brazil			✓
Canada		✓	
Colombia	✓		
Croatia	✓		
Cyprus	✓		
France	✓		
Germany	✓		
Hungary	✓		
India		✓	
Indonesia			✓
Ireland	✓		
Italy	✓		
Kazakhstan			✓
Kyrgyzstan			✓
Malaysia			✓
Mexico			✓
Nepal	✓		
Netherlands	✓		
New Zealand	✓		
Peru			✓
Philippines	✓		
Poland	✓		
Portugal	✓		
Romania			✓
Spain	✓		
South Africa	✓		
Tajikistan			✓
UAE		✓	
UK		✓	
US	✓		
Vietnam			✓

The means through which eviction moratoria have been enacted include specific bans on evictions, increasing the length of the notice period that landlords in the private and social rented sector are required to give tenants when they wish to regain possession of their property,¹⁹ and/or suspending housing possession cases for certain periods of time.

- In many cases, eviction bans apply only to individuals who meet a specific set of criteria, such as demonstrating certain degrees of COVID-19-related financial distress²⁰ or not having accrued overdue rental payments before the commencement of the pandemic.²¹
- Many eviction bans apply specifically to tenants in public housing or/and in private rental housing. Fewer bans apply to those in mortgaged housing or informal settlements and encampments. For commentary on temporary eviction bans on homeless encampments and informal settlements, see below.

*Prohibit evictions until the end of the pandemic and for a reasonable period of time thereafter.*²²

- The initial length of eviction bans has ranged from the duration of the “state of emergency”²³ (as defined in the relevant national legislation) or the duration of the pandemic,²⁴ to periods extending past the emergency declaration up to as long as six months.²⁵ In some cases, the initial length of the eviction bans has been extended.²⁶

*Ensure that all evictions or foreclosures that were approved before the pandemic commenced are suspended.*²⁷

- In numerous cases, the eviction bans’ degree of protection depends on the specific stages of the foreclosure and eviction processes that were stayed.²⁸ Depending on States’ legislation, some bans prohibit the initiation of evictions (such as the service of notice or the filing of an eviction), suspend court proceedings (evidentiary hearings or possession judgments), halt the enforcement of eviction orders, or ban foreclosure proceedings.

*Ensure the necessary resources are available to implement this order effectively, including resources to monitor and prevent extrajudicial evictions.*²⁹

- To prevent extrajudicial evictions, eviction moratoria must be legally enforceable. While many States adopted emergency legislation to ban evictions, some simply made declarations that aim to discourage evictions without legislative measures to back such declarations.³⁰ In the absence of legally binding eviction moratoria and as a result of partial shutdown of the justice system,³¹ abusive evictions have taken place during the pandemic, especially affecting people living in informal settlements.³²

PROTECTION OF TENANTS IN RENTAL HOUSING

States must undertake [...] specific measures immediately to ensure that all renters and homeowners can successfully “stay home”, help flatten the pandemic curve and emerge from the crisis whole.³³

Leilani Farha, UN Special Rapporteur on the right to adequate housing, 2014-2020

Some of the most common measures to protect the right to housing taken during the COVID-19 crisis seek to enhance security of tenure. These measures include: freezing rent increases, postponing rent payments, extending the length of a lease, or providing financial assistance to vulnerable tenants.

The main measures taken to protect the housing rights of tenants in private rental housing are: flexibility of the duration of the lease (by automatically extending the duration of the contracts due to end during the lockdown, allowing premature termination, or easing the regulations regarding contract length negotiations), postponing rent payments, rent assistance (by reducing rent, subsidizing rental payments, or providing interest-free loans), and banning increases of residential rental prices. Figure 2 provides a snapshot of the extent to which States adopted these measures.

Figure 2. Types of measures protecting the housing rights of tenants in private rental housing adopted between March – June 2020³⁴

The list of countries and legislative measures cited in this table are for illustrative purposes only; they are not exhaustive.

Absence of information does not necessarily indicate absence of measures.

	RENT PAYMENT DEFERRAL	LEASE DURATION FLEXIBILITY	RENT ASSISTANCE	RENT INCREASE FREEZE	NO ACTION
Albania	✓				
Argentina	✓	✓		✓	
Austria	✓	✓			
Belgium		sub-national	sub-national		
Canada			sub-national	sub-national	
Chile	✓		✓		
Colombia		✓		✓	
Czech Republic	✓	✓			
Ecuador					✓
El Salvador	✓			✓	
Germany	✓	✓			
Greece			✓		
Ireland		✓	✓	✓	
India	sub-national				
Kazakhstan					✓

	RENT PAYMENT DEFERRAL	LEASE DURATION FLEXIBILITY	RENT ASSISTANCE	RENT INCREASE FREEZE	NO ACTION
Kyrgyzstan					✓
Luxembourg			✓	✓	
Mexico	✓				
Netherlands	✓	✓		✓	
New Zealand		✓		✓	
Philippines	✓				
Poland		✓		✓	
Portugal	✓		✓		
Spain	✓	✓	✓	✓	
Trinidad and Tobago			✓		
Venezuela	✓				
Vietnam					✓

COVID-19 Guidance Note key recommendations and State practices

Implement an immediate rent freeze, prohibiting any increases in rental costs including any adjustments for inflation, during the pandemic and for a reasonable period thereafter.³⁵

- In States that have implemented rent increase freezes, their initial duration has varied from three³⁶ to six months.³⁷ In some cases, rent increases that were notified before the introduction of the emergency legislation but which had not yet come into effect were still allowed.³⁸

Prohibit the cancelling of rental contracts during the pandemic and for a reasonable period thereafter, except in the context of criminal behaviour, particularly where the behaviour will harm other tenants.³⁹

- Some States have adopted legislation that automatically extends rental contracts until the end of the emergency period.⁴⁰ Other countries have allowed for the premature termination of rental contracts⁴¹ or, more commonly, prohibited the termination of rental contracts for a specific period of time, up to six months⁴² or one year.⁴³

States must ensure housing affordability for tenants whose incomes decline as a result of COVID-19 [...] and ensure that tenants affected by the crisis do not have to pay more than 30 percent of their monthly net income on housing costs.⁴⁴

- To ensure housing affordability for vulnerable tenants, a broad range of measures has been taken. For example, rent payments have been deferred for various periods

of time: from 30 days in the Philippines (without incurring interest and penalties),⁴⁵ to three months in El Salvador,⁴⁶ to six months in Venezuela,⁴⁷ and over two years in Germany (with interest on arrears permitted).⁴⁸ In Zambia, authorities appealed to landlords to waive rental payments during the COVID-19 crisis but, reportedly, this was not backed by legislation.⁴⁹ In numerous countries, penalties for rent arrears were not allowed; however, compensatory interest was permitted. In Austria, for example, there is a default interest of four percent, which has to be paid in addition to the overdue rent.⁵⁰

- Some States have opted for measures that provided financial assistance for vulnerable tenants. For instance, in Greece affected employees were granted a 40 percent rent reduction for the month of April,⁵¹ while in Spain large-scale landlords were required to ease rental costs for vulnerable residents and affected employees could apply for zero-interest credits to cover up to six months of rent.⁵² In Portugal, interest-free loans were made available to support the difference between the amount of monthly income due and the amount resulting from the application of a maximum rate of 35 percent to household income, without resulting in a household income lower than the social support index.⁵³ In Trinidad and Tobago,⁵⁴ and at the sub-national level in Belgium⁵⁵ and Canada,⁵⁶ temporary rent supplements were introduced, paid either to vulnerable tenants or directly to landlords. Notwithstanding such measures, the recommended cap on monthly housing costs, 30 percent of tenants' monthly net income, was virtually ignored.
- Regarding public housing rent, measures ranged from temporarily waiving rental payments,⁵⁷ to social housing providers and tenant associations devising payment plans for struggling tenants.⁵⁸

MORTGAGE PAYMENT DEFERRALS

States must adopt policies with respect to mortgage payments for populations who suffer financial setbacks during the pandemic.⁵⁹

Leilani Farha, UN Special Rapporteur on the right to adequate housing, 2014-2020

Mortgage payment deferrals—also known as “mortgage holidays” or “mortgage moratoria”—have been used across many jurisdiction as an emergency measure to protect mortgage payers from losing their homes. Such deferrals allow for a temporary delay in the payment of debt in cases where people experienced financial difficulties that precluded them from fulfilling their mortgage obligations.

COVID-19 Guidance Note key recommendations and State practices

*States must [...] adopt policies with respect to mortgage payments for populations who suffer financial setbacks during the pandemic. At a minimum it is imperative that States ensure Banks and other lenders re-negotiate mortgage payments with those affected by COVID-19, so that no more than 30 per cent of household income is devoted to debt servicing during the pandemic and for a reasonable time thereafter.*⁶⁰

- While in many States mortgage payers did not have the option to apply for a temporary suspension of mortgage payments, across the States that adopted such policies there have been two main categories of mortgage moratoria for vulnerable borrowers:
 - Voluntary moratoria – adopted by some banks or bank consortiums, often based on negotiations with governments or as a result of recommendations made by central banks or national regulatory authorities; or
 - Imposed moratoria – which impose mandatory obligations at the State level, as a result of States’ legislation or national regulatory authorities mandatory decisions, to allow borrowers to defer their payments.

Figure 3 illustrates the types of mortgage moratoria adopted in some States. For the purpose of this paper, “no systemic action” means that although no measures were adopted to offer widespread protection for mortgage payers, some banks nevertheless might have decided, on their own initiative, to offer mortgage payment deferrals.

Figure 3. Mortgage moratoria adopted between March–June 2020⁶¹

The list of countries cited in this table is for illustrative purposes only.

This list is not exhaustive.

	NATIONAL LEGISLATION	SUB-NATIONAL LEGISLATION	NO BAN
Albania	✓		
Argentina	✓		
Austria	✓		
Bosnia and Herzegovina	✓		
Croatia	✓		
Colombia			✓
Cyprus	✓		
Czech Republic	✓		
Ecuador			✓
El Salvador	✓		
Finland		✓	
Georgia		✓	
Hungary	✓		

Ireland		✓
Italy	✓	
Kazakhstan	✓	
Kenya		✓
Latvia		✓
Lithuania		✓
Mexico		✓
Moldova		✓
Namibia		✓
North Macedonia		✓
Philippines	✓	
Portugal	✓	
Romania	✓	
Spain	✓	
Ukraine		✓
UK	✓	
Vietnam		✓

The initial length of mortgage payment deferrals has ranged from one,⁶² three,⁶³ six,⁶⁴ or nine months⁶⁵ to up to one⁶⁶ or even two years.⁶⁷ In some cases the provisions related to the duration of mortgage moratoria have been revisited and extended.

- Where mortgage payment deferral schemes have been introduced, there has been great variety regarding the degree of protection offered. Some mortgage moratoria allow for the postponement of payments to be provided only for those who prove that more than a third of their income has been lost.⁶⁸ In numerous cases, the suspension of mortgage payments applies strictly to borrowers who maintained their accounts in good standing before the onset of the pandemic.⁶⁹ There have been instances in which banks have refused to provide assistance with mortgage payments due to other income support measures that were put in place by the government.⁷⁰

No tenant or homeowner should accrue unsustainable debt as a result of any of the proposed measures[...].⁷¹

- While some mortgage relief policies have suspended the payment of principal and interest,⁷² numerous mortgage payment moratoria have suspended only the payment of the principal while allowing interest accrual.

PROTECTION OF RESIDENTS IN INFORMAL SETTLEMENTS

In order to prevent the spread of COVID-19, States across the world are asking and, in some cases, legislating that people “stay home”. This is based on the assumption that one’s home provides protection against contracting and spreading the virus. This is not always the case.⁷³

Leilani Farha, UN Special Rapporteur on the right to adequate housing, 2014–2020

Many residents of informal settlements and encampments live in highly precarious conditions, where not only is it impossible to practice physical distancing, due to high population density, but there is also little or no access to water, other utilities, and sanitary facilities.⁷⁴ In response to the pandemic, several States have specifically adopted measures regarding the protection of residents of informal settlements and/or provided additional funds to strengthen social services and develop emergency measures for such residents.⁷⁵ Across the globe, nevertheless, a great part of the support for residents of informal settlements has been provided by civil society organizations.⁷⁶

COVID-19 Guidance Note key recommendations and State practices

Declare an end to all forced evictions of informal settlements and encampments. Ensure the necessary resources are available to implement this order effectively, including resources to monitor and prevent extrajudicial evictions.⁷⁷

- In some States, eviction moratoria have specifically banned forced evictions from and/or demolitions of informal settlements and encampments. The Philippines, for example, adopted legislation to postpone all demolition and eviction activities during the community quarantine.⁷⁸ In some instances, such as in South Africa, even where such bans on forced evictions were in place, they were, nevertheless, carried out in the context of informal settlements.⁷⁹ In India, Kenya, Ethiopia, and Nigeria, which did not adopt national moratoria on evictions, people living in informal settlements have been subject to mass forced evictions and home demolitions during the worst period of the crisis.⁸⁰

Ensure all residents of informal settlements/encampments have access to an adequate, affordable, and proximate supply of water, toilets, showers, sanitation services, soap, hand sanitizer, disinfectants, and masks.⁸¹

- Ensuring access to water and sanitation facilities has been one of the most common measures that States adopted to protect the rights of people living in informal settlements and encampments. For example, in Ireland the government directed authorities to put in place extra sanitary facilities and additional mobile accommodation, as well as ensure uninterrupted flow of running water, where there is overcrowding, such as in Travelers’ communities.⁸² Similarly, in Zambia,⁸³

Argentina,⁸⁴ Mexico,⁸⁵ and Chile,⁸⁶ governments adopted measures to ensure that there is uninterrupted access to water and/or provided extra food, hygiene, and health services.

PROTECTION OF PEOPLE LIVING IN HOMELESSNESS

COVID-19 has exposed the myth of individualism, revealing the ways in which our collective wellbeing depends not only on our own ability to “stay home”, but the ability of others to do the same.⁸⁷

Leilani Farha, UN Special Rapporteur on the right to adequate housing, 2014–2020

The pandemic turned homelessness into a public health priority for which exceptional measures were put in place in order to temporarily house, isolate, and keep people safe. The crisis has further exposed the housing vulnerabilities that people living in abusive homes face, particularly women, children, and youth who risk becoming homeless if they leave their abusers.

At the height of the crisis, in some European States, governments’ measures have led to an overwhelming drop in the number of people living on the streets.⁸⁸ For example, according to UK government figures, by mid-April more than 90 percent of rough sleepers in England were offered emergency accommodation.⁸⁹ The pandemic could have been a watershed moment for adequately addressing the systematic issue of homelessness, but few States took this moment to review their flawed housing policies.

COVID-19 Guidance Note key recommendations and State practices

Immediately provide accommodation to all homeless people living ‘rough’ or on the streets with a view to transitioning them to permanent housing so that they do not return to a situation of homelessness once the pandemic is over.⁹⁰

- While numerous States have taken no additional steps to protect homeless people beyond measures already in place before the pandemic,⁹¹ some provided immediate temporary accommodation to people sleeping rough. This response has taken numerous forms, including requisitioning hotels to host homeless people, as was done in London⁹² and in some municipalities in Belgium,⁹³ Czech Republic,⁹⁴ and France.⁹⁵ Other municipalities rented empty social homes and provided them to homeless people, as in Belgium’s Flemish region,⁹⁶ or sheltered people in improvised emergency shelters—such as in Spain⁹⁷, the Philippines,⁹⁸ and Indonesia⁹⁹—or extended the opening times of winter emergency shelters, as in Denmark.¹⁰⁰ But only in a very few cases have measures been taken to transition homeless persons into permanent housing.¹⁰¹

Ensure that women, children and youth who may need to leave a household due to violence do not fall into homelessness and are provided with adequate alternative accommodations that ensure safety and provide access to water/sanitation, food, social supports, health services and testing for COVID-19.¹⁰²

- Since the beginning of the pandemic, there has been a surge in reported cases of domestic violence, particularly against women, girls, and LGBT+ people. This was coupled with an increase in demand for emergency shelter for those fleeing abuse.¹⁰³ To meet this demand, some States, such as Italy,¹⁰⁴ Canada, Australia, France, and the UK,¹⁰⁵ allocated additional financial support for shelters and organizations providing services to those fleeing abuse.¹⁰⁶ In Italy, the application procedures for access to shelters, housing, and anti-violence centers were simplified and prefectures were instructed to identify new housing solutions for women victims of violence.¹⁰⁷ In Canada, in Quebec and Ontario, domestic violence shelters were deemed essential services and had to remain open during the lockdown.¹⁰⁸ To expand the capacity of shelters, some States re-purposed other spaces, such as empty hotels, to accommodate quarantine needs.¹⁰⁹
- In many States, refuges for survivors of domestic violence often depend on government housing benefit payments for financial support. This means that many shelters cannot accept survivors who are subject to immigration control and have no entitlement to welfare benefits (known in the UK as “no recourse to public funds”). Because of their immigration status, migrant women have faced particular barriers to getting critical services, and may resist going to the authorities due to risk of detention, deportation, or separation from their children. By June 2020, Wales and Scotland instructed local authorities to ensure safe shelter for all of those fleeing domestic abuse during the pandemic, regardless of their immigration status. However, England and Northern Ireland have not issued such explicit instructions.¹¹⁰

PROTECTION OF MIGRANTS

No migrant worker or domestic worker should be left in a situation of homelessness.¹¹¹

Leilani Farha, UN Special Rapporteur on the right to adequate housing, 2014–2020

Although numerous States adopted laws and policies to ensure respect for the right to housing during the COVID-19 pandemic, few adopted formal policies that address migrants’ housing vulnerabilities, particularly those faced by undocumented migrants whose status does not allow them to seek judicial relief.¹¹² In numerous States, migrant workers were asked to return to their country or place of origin despite the closing of borders or the suspension of national and international travel.¹¹³ As the current UN Special Rapporteur on the right to adequate housing, Balakrishnan Rajagopal, noted:

[Migrants] have been particularly exposed to the economic impact of lockdowns and the closing of workplaces. Many lack a permanent address, official work authorizations or work contracts and are thus often excluded from national social protection systems or face significant barriers to justice for violations related to work and housing rights.¹¹⁴

COVID-19 Guidance Note key recommendations and State practices

Where migrant workers or domestic workers are housed in their place of work or in accommodation provided by their employers, States must ensure that they can either remain housed free of charge or at a rent affordable to them [...] If accommodation cannot be reasonably provided by their employers, the State is obliged to provide affected migrant and domestic workers with alternative secure accommodation.¹¹⁵

- While some States required local authorities to utilize alternative powers and funding to assist people who have no entitlement to welfare benefits but who require shelter, such as migrants in the UK,¹¹⁶ others adopted legislation that allowed migrants who applied for residency before the state of emergency to receive temporary residency rights, as was done in Portugal.¹¹⁷ In India, despite the central government's prohibition on the eviction of migrant workers for non-payment of rent, migrant workers faced the major, even deadly, challenges of hunger, illness, and destitution.¹¹⁸

PROTECTION OF ASYLUM SEEKERS

Due to the COVID-19 pandemic, States across the globe have closed their borders, adopted travel bans, and imposed restrictions on human mobility.¹¹⁹ This has greatly affected asylum seekers during and after the lockdown,¹²⁰ as many States have suspended asylum administrative procedures.¹²¹

COVID-19 Guidance Note key recommendations and State practices

Declare an end to all evictions of anyone, anywhere for any reason until the end of the pandemic and for a reasonable period of time thereafter.¹²²

- A common measure undertaken by States has been to extend the validity of asylum seekers' documents, even if expired.¹²³ However, this only addressed asylum seekers' vulnerabilities from an immigration perspective. In Greece, municipalities did not offer alternative temporary accommodation and the government resumed the plan to discontinue housing provisions to recognized refugees and to those whose asylum applications had been rejected.¹²⁴ In parts of France, asylum seekers living in makeshift tents were subjected to forced evictions.¹²⁵

- Conversely, in some cases governments have adopted temporary moratoria on removals and provided housing assistance. In France, for instance, reception centers were instructed not to remove asylum seekers currently accommodated, including those with rejected applications.¹²⁶ Similarly, in the UK, evictions from asylum accommodation were suspended for at least three months.¹²⁷ In the medium term, however, temporary housing support that excludes financial and social services support may drive people into homelessness and destitution.
- Notably, Portugal has taken the unprecedented measure to give temporary residency rights to asylum seekers who applied for residency before the state of emergency. This, in effect, has given them access to the country's national health service, bank accounts, and work and rental contracts for at least three months.¹²⁸

CONCLUSION: OPEN QUESTIONS

The pandemic has changed the meaning of “home” fundamentally. Stay-at-home orders – which will continue to be issued periodically as the virus likely spikes during the coming months – compel the reimagination of what a home is: it is not only a refuge from the virus and a safe place for physical distancing; it is also a place of paid and unpaid work [...] it is a childcare centre and a school [...]. The combination of so many functions in a single entity – the home – should lead to a basic rethinking of the right to adequate housing and a greater recognition of its centrality.¹²⁹

Balakrishnan Rajagopal, the current UN Special Rapporteur on the right to adequate housing

This briefing paper mapped the most common legislative measures that States adopted to prevent people from losing their homes during the first four months of the pandemic. But now, nine months since the World Health Organization declared COVID-19 a pandemic, many of the emergency response measures to this health and economic crisis have been subject to reviews or termination. While the emergency context in which the cited measures were adopted provides a real challenge for long-term planning, research, legislative, policymaking work should address the following questions regarding the protection of the right to housing during this ongoing pandemic:

The duration of emergency measures

- What is the best way to determine the duration of emergency housing measures? Should there be a specific time limit or should their duration be determined according to a number of indicators related to economic recovery and State assistance for the business and financial sector? What can be learned, in this respect, from the 2007-8 financial crisis?

The strength of the measures

- How can States be persuaded to adopt legally binding measures that protect the right to housing for all during emergencies? Are there circumstances under which voluntary measures would be more effective?

The implementation of the measures

- To what extent have the adopted measures actually been implemented on the ground and how effective is their monitoring and evaluation?
- Do States have measurable goals and timelines?
- Are States acting with requisite urgency?
- Is non-discrimination ensured?
- Is non-compliance with the adopted measures sanctioned appropriately?

Maximum available resources

- Are adequate resources, in keeping with human rights obligations, being mobilized to ensure access to adequate, affordable, safe housing for all?

Effective remedies

- Are there effective legal remedies in place to address the violation of the measures and ensure the realization of the right to housing?

The impact of the measures

- What has been, so far, the impact of the measures and what unique aspects of the pandemic were successfully addressed through policy or legislative responses?
- Housing injustice is intimately linked with racial and gender injustice. Have these measures, or the absence thereof, had a disproportionate impact on vulnerable communities based on race, ethnicity, gender, sexual orientation, or age? Is disaggregated data on housing rights violations collected in a systemic manner so that States have a better understanding of the populations that are most vulnerable to housing insecurity?
- Are those most in need provided for?

The sustainability of the measures

- How can the sustainability of the measures be preserved, especially given that they contribute to the progressive realization of the right to housing, and given that going back to the pre-pandemic state of affairs could amount to a violation of the principle of non-retrogression for economic and social rights?

The mainstreaming of the right to housing in recovery plans and budgets

- How can States and international financial institutions best ensure that the right to housing is used to shape the post-COVID-19 crisis recovery plans?

As the world continues to battle the COVID-19 pandemic and related economic downturn, how States answer these questions will determine not just whether the right to housing will be realized at this critical moment, but whether the virus can be defeated and a rights-based order can re-emerge in its wake. The [model emergency housing legislation](#) that the Justice Initiative developed in collaboration with leading experts on the right to housing provides a comprehensive blueprint for States to do so.

Endnotes

- 1 See <https://www.justiceinitiative.org/topics/economic-justice>.
- 2 The COVID-19 Guidance Notes were issued by the former UN Special Rapporteur on the right to adequate housing, Lailani Farha, who held this mandate between 2014 and 2020. The current UN Special Rapporteur on the right to adequate housing is Balakrishnan Rajagopal, who assumed this function on May 1, 2020.
- 3 While the adopted measures have contributed, to a certain extent, to the protection and fulfillment of the right to housing, the dominant discourse around the measures has focused primarily on economic reasoning rather than human rights.
- 4 Balakrishnan Rajagopal. “Report 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: COVID-19 and the right to adequate housing: impacts and the way forward,” A/75/148, July 27, 2020, available at: <https://undocs.org/A/75/148>, p. 5, para. 5.
- 5 The term “State” refers to both legislatures and different levels of government, including at national, state, regional, and municipal levels.
- 6 UN Special Rapporteur on the right to adequate housing, 2020, “Call for input: COVID-19 and the right to housing,” available at: <https://www.ohchr.org/EN/Issues/Housing/Pages/callCovid19.aspx>; OHCHR, 2020, “Joint questionnaire on COVID-19 and human rights,” available at: <https://www.ohchr.org/EN/HRBodies/SP/Pages/Joint-questionnaire-COVID-19.aspx>.
- 7 Balakrishnan Rajagopal, “COVID-19 and the right to adequate housing: impacts and the way forward.”
- 8 Leilani Farha, UN Special Rapporteur on the right to adequate housing 2014-2020, *COVID-19 Guidance Note: Prohibition of evictions*, updated April 28, 2020, available at: https://www.ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_guidance_evictions.pdf, p. 1.
- 9 Ibid.
- 10 Ibid.
- 11 Leilani Farha, UN Special Rapporteur on the right to adequate housing 2014-2020, *COVID-19 Guidance Note: Protecting renters and mortgage payers*, April 8, 2020, available at: https://www.ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_guidance_rent_and_mortgage_payers.pdf.
- 12 Leilani Farha, UN Special Rapporteur on the right to adequate housing 2014-2020, *COVID-19 Guidance Note: Protecting residents of informal settlements*, April 23, 2020, available at: https://www.ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_Guidance_informal_settlements.pdf.
- 13 Leilani Farha, UN Special rapporteur on the right to adequate housing 2014-2020, *COVID-19 Guidance Note: Protecting those living in homelessness*, April 28, 2020, available at: https://www.ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_guidance_homeless.pdf.
- 14 Leilani Farha, UN Special Rapporteur on the right to adequate housing 2014-2020,

COVID-19 Guidance Note: Protecting housing from financialization and building back a better future, April 28, 2020, available at: https://www.ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_guidance_finacilization.pdf.

- 15 Leilani Farha, Prohibition of evictions.
- 16 Forced eviction is “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection” (Committee on Economic, Social and Cultural Rights, General Comment No. 7 (1997) on the right to adequate housing: forced evictions). For a more detailed legal commentary on “forced evictions,” see: UN Habitat, 2014. *Forced Evictions Fact Sheet*, No. 25/Rev.1, available at: <https://www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf>.

- 17 Leilani Farha, Prohibition of evictions, para. 1 and 4.

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