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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Housing, land and property issues in the context of internal
displacement****Report of the Special Rapporteur on the human rights of internally
displaced persons, Cecilia Jimenez-Damary***Summary*

In the present report, the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary, provides an account of the activities she has undertaken pursuant to the mandate given to her by the Human Rights Council in resolution 41/15.

In the thematic section of the report, the Special Rapporteur examines housing, land and property issues in the context of internal displacement. She analyses how these issues can drive displacement, be a consequence of it and be an obstacle to durable solutions. The Special Rapporteur looks at the impact of these issues on the human rights of internally displaced persons and how they can be addressed.



I. Introduction

1. The present report of the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary, is submitted in accordance with Human Rights Council resolution 41/15. In it, the Special Rapporteur provides an overview of the activities she has undertaken since her previous report (A/HRC/44/41) and examines housing, land and property issues in the context of internal displacement.

II. Activities of the Special Rapporteur

2. During the reporting period, the Special Rapporteur focused on implementing the tasks set out in the resolutions governing her mandate despite the constraints imposed by the coronavirus disease (COVID-19) pandemic. In accordance with her thematic priorities, the Special Rapporteur continued to actively promote the four themes of the Plan of Action for Advancing Prevention, Protection and Solutions for Internally Displaced People 2018–2020,¹ which she had launched with Member States, United Nations agencies and other stakeholders at an event held in 2018 to mark the twentieth anniversary of the Guiding Principles on Internal Displacement. In commemoration of the twenty-second anniversary of the Guiding Principles, in 2020, the Special Rapporteur issued press releases and promotional videos with the Global Protection Cluster. In October 2020, the Special Rapporteur contributed to the organization of an intersessional seminar² to follow up on the implementation of the Plan of Action that was convened by the Office of the United Nations High Commissioner for Human Rights (OHCHR) pursuant to Human Rights Council resolution 41/15 and that she moderated. The time frame for the implementation of the Plan of Action formally ended in December 2020 with the launch of a compilation of national practices³ drawing on good practices from 16 countries.⁴

3. The Special Rapporteur, individually and jointly with other mandate holders, issued press releases and statements and participated in online webinars on the impacts of the COVID-19 pandemic. She contributed to capacity-building endeavours, including by co-hosting the three International Institute for Humanitarian Law courses entitled “IDP law and policy”. The courses were offered in English, French and, for the first time, in Spanish and were attended mainly by government officials from over 40 countries. In order to promote the Guiding Principles on Internal Displacement and their implementation, the Special Rapporteur gave lectures and presentations in classes and meetings hosted by academic institutions, including the University of Oxford, the University of Geneva, Tufts University Fletcher School of Law and Diplomacy, the University of London and the University of Warwick. The Special Rapporteur contributed to publications such as the *Refugee Survey Quarterly*, the *Forced Migration Review* and a publication by the Institute of Human Rights and Peace Studies of Mahidol University. She participated in conferences hosted by professional and civil society entities such as the Kaldor Centre for International Refugee Law, the International Law Association of the American Bar Association, the Global Protection Cluster, Asia Justice and Rights, the Norwegian Refugee Council, the Women’s Network on Displacement of the Federal Ministry for Economic Cooperation and Development of Germany and the Global Alliance of National Human Rights Institutions. The Special Rapporteur contributed to country-based initiatives carried out by the authorities in South Sudan, the Bangsamoro Transition Authority in the Philippines and the Chiapas State Commission on Human Rights in Mexico. The Special Rapporteur also issued joint press releases with other mandate holders, national human rights institutions and United Nations country offices.

4. To obtain contributions to and promote her thematic reports to the General Assembly and the Human Rights Council, the Special Rapporteur held numerous consultations,

¹ See www.ohchr.org/EN/Issues/IDPersons/Pages/MultiStakeholderPlanOfAction.aspx.

² See www.ohchr.org/EN/Issues/Migration/Pages/SeminarHRAndIDP.aspx.

³ Hannah Entwisle Chapuisat, *Working Together Better to Prevent, Address and Find Durable Solutions to Internal Displacement: GP20 Compilation of National Practices* (2020).

⁴ The successor to the Plan of Action will focus on durable solutions.

meetings and webinars, including with representatives of Member States, United Nations agencies, the Platform on Disaster Displacement, the Task Force on Displacement established pursuant to a request of the Conference of the Parties to the United Nations Framework Convention on Climate Change, the Asia-Pacific Forum of National Human Rights Institutions, United Nations Resident and Humanitarian Coordinators and the International Disability Alliance. In follow-up to her visit to El Salvador, the Special Rapporteur contributed substantively to a course hosted by the Salvadorean national protection cluster for victims of forced displacement.

5. The Special Rapporteur focused on mainstreaming the human rights of internally displaced persons within the United Nations system and other intergovernmental regional mechanisms. As a standing invitee, she participated actively in the meetings of the Inter-Agency Standing Committee, especially those on the humanitarian responses to the pandemic and country situations, on endorsements of collective decisions on guidance to United Nations agencies and non-governmental organizations and on humanitarian cluster activations. The Special Rapporteur also participated in events hosted by United Nations agencies and entities, including OHCHR, the Office of the United Nations High Commissioner for Refugees, the International Organization for Migration, the United Nations Children's Fund (UNICEF), the inter-agency Joint Internally Displaced Person Profiling Service, of which she is an executive committee member, and the Expert Group on Refugee and Internally Displaced Persons Statistics of the Statistical Commission. With regard to regional mechanisms, the Special Rapporteur provided inputs to the Parliamentary Assembly of the Council of Europe hearing on arbitrary displacement, the African Union eighth humanitarian symposium and the Economic Community of West African States conference on the incorporation into national law of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa. Moreover, she issued a joint press release with the Inter-American Commission on Human Rights. She continues to be engaged with the High-level Panel on Internal Displacement established by the Secretary-General, in accordance with its terms of reference.

III. Housing, land and property issues in the context of internal displacement

A. Introduction

6. The loss of land and housing is a key feature of internal displacement regardless of its cause. Globally, both internal displacement and tensions over land are on the rise.⁵ Tensions and conflict related to land and housing are likely to increase in the future owing to climate change, natural hazards, large-scale land investments, extractive industries, food insecurity, population growth and rapid urbanization. Housing, land and property issues arise at all stages of displacement. They drive conflict and displacement, are a consequence of displacement and pose obstacles durable solutions. Addressing housing, land and property issues in situations of displacement is therefore essential to preventing displacement, mitigating its impact and achieving durable solutions.

7. The loss of housing, land and property threatens a range of human rights that States have an obligation to respect, protect and fulfil. States should therefore refrain from interfering with such rights, protect internally displaced persons and people at risk of displacement from abuses and take positive action to ensure the enjoyment of housing, land and property rights.

8. The multiple dimensions of housing, land and property underline the necessity for a multisectoral approach to address the issue, one that takes into consideration the differential impact on specific groups. Housing, land and property issues are a human rights, humanitarian, development and peace challenge that cuts across many sectors of activities and governance, including poverty reduction, agriculture, land administration, urban

⁵ Guidance note of the Secretary-General, "The United Nations and land and conflict", March 2019; Internal Displacement Monitoring Centre, *Global Report on Internal Displacement 2020*.

planning, corporate and mining legislation, disaster risk reduction, shelter and housing, transitional justice, rule of law and peacebuilding.

9. Through the present report, the Special Rapporteur aims to increase the awareness of States, local governments and others involved in housing, land and property issues in the context of displacement about typical challenges, effective responses and available policy instruments and tools. She highlights areas of common interest and areas that would benefit from coordination among ministries, local authorities and humanitarian, development and peace actors.

10. The Special Rapporteur expresses her gratitude for the valuable information received from a wide range of stakeholders, in particular during the consultations organized by the Global Protection Cluster under the housing, land and property area of responsibility.

B. Legal and policy framework

What are housing, land and property rights?

11. For the purpose of the present report, housing, land and property rights are about:

Having a home, free from the fear of forced eviction; a place that offers shelter, safety and the ability to secure a livelihood. [It] includes the full spectrum of rights to housing, land and property held according to statutory or customary law or informally ... Land rights are rights held to both land and natural resources. [Housing, land and property] rights are held by owners, tenants, cooperative dwellers, customary land tenure owners and users, and informal sector dwellers without secure tenure.⁶

12. Housing, land and property rights encompass the right to an adequate standard of living, adequate housing, property, return and remedy, including restitution and compensation. The right to adequate housing has multiple dimensions, including legal security of tenure, access to public goods and services, affordability, habitability, physical accessibility, location and cultural adequacy.⁷ The prohibition of forced eviction is a key aspect of legal security of tenure. A 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”.⁸ Forced evictions violate several human rights and can result in internal displacement.

13. Housing, land and property issues can also be closely related to the enjoyment of other human rights, including the rights to food, to freedom of movement and choice of residence⁹ (e.g., when people who are forced to flee their homes or, once displaced, are unable to return or settle elsewhere), to be protected from interference with one’s privacy and home,¹⁰ to water and sanitation and to health (e.g., accessibility to water and sanitation is often dependent on housing and their absence is detrimental to health, particularly in relation to communicable diseases such as COVID-19).

14. The right to land is linked to the enjoyment of a range of human rights.¹¹ International law recognizes the land rights of indigenous peoples (who have a distinctive spiritual relationship with their traditionally owned lands, territories and resources)¹² and equal access, use and control of land to women (who are often discriminated against in relation to access

⁶ Norwegian Refugee Council and International Federation of Red Cross and Red Crescent Societies, “The importance of addressing housing, land and property: challenges in humanitarian response” (2016), p. 5.

⁷ E/1992/23; Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997).

⁸ Economic, Social and Cultural Rights, general comment No. 7 (1997), para. 3.

⁹ International Covenant on Civil and Political Rights, art. 12.

¹⁰ *Ibid.*, art. 17.

¹¹ OHCHR, *Land and Human Rights: Standards and Applications* (2015).

¹² Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization, arts 7 and 13–19; United Nations Declaration on the Rights of Indigenous Peoples, arts. 8, 19, 25–30 and 32.

to property and inheritance).¹³ In response to increased competition over land and natural resources, new guidance on protecting customary land rights and access to land in support of food security and the sustainable use of resources has been developed during the past decade.

15. The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas have been adopted to improve governance over land and protect legitimate tenure rights, notably those of vulnerable and marginalized groups. Both texts reflect States' commitment and responsibility to regulate land investments and ensure they do not contribute to food insecurity, environmental degradation and displacement; to legally recognize individual and collective customary land tenure rights; to provide remedies in case of displacement resulting from development activities, conflict or disaster; and, where necessary, to carry out agrarian reforms to improve equitable access to land and natural resources. By emphasizing the need to protect "legitimate" land rights and linking them to livelihoods and the right to food, the guidance encourages the development of national laws and policies that protect holders of customary land rights from contemporary pressures, thereby limiting these sources of displacement.

16. At the time of writing the present report, the Committee on Economic, Social and Cultural Rights was drafting a general comment on land and the International Covenant on Economic, Social and Cultural Rights.

Housing, land and property and displacement

17. The Guiding Principles on Internal Displacement contain provisions restating the obligations of States and others relating to housing, land and property and displacement. They set out, for example, the obligation of the authorities to explore feasible alternatives to displacement, obtain the free and informed consent of those affected prior to relocation or displacement and provide proper accommodation and remedies (principle 7). States are also under a particular obligation to protect against the displacement of indigenous peoples and other groups with a special dependency on and attachment to their lands (principle 9). During displacement, internally displaced persons should be provided with basic shelter and housing, food and potable water (principle 18) and their property and possessions should be protected (principle 21). States should take measures to support the reintegration of displaced persons who have returned, notably by assisting them in recovering their property or by providing compensation (principles 28–29).

18. The principles on housing and property restitution for refugees and displaced persons, which provide guidance on how to design mechanisms for the restitution of property to refugees and displaced persons, are based on international practice. The principles reaffirm the rights of non-owners such as renters, residents of informal settlements, secondary occupants and holders of customary land rights. Other key documents include the basic principles and guidelines on development-based evictions and displacement and, at the regional level, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa and the Protocol on the Property Rights of Returning Persons.¹⁴

19. The commitments of States to integrate displacement concerns into disaster risk reduction and climate change adaptation laws and policies – for example, measures related to life-saving evacuations, preparedness or responses to disasters, measures for improving the resilience of housing and infrastructure, and planned relocations carried out as a last resort, when adaptation measures in situ are not possible – have numerous implications for the rights to housing, land and property.¹⁵ In that regard, the Sendai Framework for Disaster Risk

¹³ Universal Declaration of Human Rights, art. 16; International Covenant on Civil and Political Rights, art. 26; Convention on the Elimination of All Forms of Discrimination against Women, arts. 14 (2) (g)–(h) and 16 (1) (h). These instruments protect women from discrimination based on sex or marital status in relation to ownership and inheritance and protect the rights of rural women to gain access to credit and land resettlement schemes.

¹⁴ The instrument is a protocol to the Pact on Security, Stability and Development in the Great Lakes Region, 15 December 2006.

¹⁵ A/75/207.

Reduction 2015–2030 underscores the relevance of integrating disaster risk reduction measures into building, land use and urban planning regulations in order to strengthen preparedness and responses to disasters.¹⁶

Global processes relevant to housing, land and property and internal displacement

20. Several global processes are relevant to housing, land and property, to achieving durable solutions and to development. At the World Humanitarian Summit, in 2016, a commitment was made to adopt a “new way of working” to transcend the institutional divide between humanitarian and development actors.¹⁷ Governments were called upon to implement long-term strategies to address internal displacement and achieve durable solutions and it was recognized that internally displaced persons must have durable housing, livelihoods and secure land tenure.¹⁸ In a guidance note,¹⁹ the Secretary-General confirmed the commitment of the United Nations to addressing housing, land and property issues linked to conflict in a holistic and coherent manner, across the Organization’s three pillars of peace and security, human rights, and development. In November 2020, the Central Emergency Response Fund updated its life-saving criteria to include housing, land and property interventions as activities eligible for funding.²⁰ Land also appears in several targets and indicators of the Sustainable Development Goals related to poverty, hunger, gender equality, sustainable, inclusive and resilient cities and the sustainable use of resources.

21. In the New Urban Agenda, adopted in 2016, the United Nations Conference on Housing and Sustainable Urban Development (Habitat III)²¹ defined a framework for urbanization that included policies focusing on upgrading and retrofitting informal settlements through community-based planning and solutions such as incremental housing and self-build schemes.

C. Understanding the relationship between housing, land and property, internal displacement and human rights

Housing, land and property issues as causes of displacement

22. Land is a valuable resource for livelihoods, trade and economic development. Land also has social and spiritual dimensions, notably for indigenous peoples and other groups with a special attachment to their lands. These multiple dimensions create conflicting interests that can escalate into tensions, conflict and forced evictions or displacement, as evidenced by the World Bank’s estimate that 65 per cent of today’s conflicts have a significant land dimension.²² Unaddressed discriminatory policies and previous waves of displacement and land dispossession create historical grievances, thereby endangering social cohesion and trust. Poverty and socioeconomic marginalization due to landlessness, unequal access to land and a high concentration of land owned by a small number of people or organizations are other powerful drivers of conflict.

23. The impact on land and housing of development and business activities such as large-scale investments in land, infrastructure, mining and urban renewal have led to displacement and expropriation under conditions amounting to forced eviction. Conservation measures have also resulted in forced evictions and displacement in numerous countries and particularly affected the land rights of indigenous people.²³ In other cases, competition over access to valuable resources has resulted in violent attacks on civilians, the destruction or

¹⁶ General Assembly resolution 69/283, annex II, paras. 18–19, 22, 27 (d), 30 (f)–(g) and 33 (j)–(k).

¹⁷ A/71/353.

¹⁸ A/70/709, para. 84 (a).

¹⁹ See footnote 6.

²⁰ See <https://reliefweb.int/sites/reliefweb.int/files/resources/Central%20Emergency%20Response%20Fund%20Life-Saving%20Criteria.pdf>.

²¹ General Assembly resolution 71/256, annex.

²² World Bank Group, *World Bank Group Strategy for Fragility, Conflict and Violence 2020–2025* (2020), p. 18.

²³ A/71/229.

occupation of housing and property and sustained conflict involving military forces, non-State armed groups and criminal organizations.

24. In the context of sudden-onset disasters, internal displacement may take the form of spontaneous flight, an evacuation ordered or enforced by the authorities or an involuntary planned relocation process from high-risk areas.²⁴ Internal displacement can also result from the adverse effects of climate change such as land degradation, drought, salinization, floods or sea-level rise and occur both before and after such events.²⁵ Competition over scarce land resources can also exacerbate tensions and fuel conflict, for example, between pastoralists and farmers.

Housing, land and property issues during displacement

25. Internally displaced persons' access to land and housing during displacement depends on various circumstances, including whether displacement happens suddenly, like in situations of conflict, violence and disaster, or as part of a planned process.

26. The loss of land and housing negatively affects a wide range of human rights. Loss of livelihood exposes many to poverty, which affects their capacity to access food and adequate housing. The destruction caused by conflict or disaster limits housing opportunities and exacerbates pre-existing systemic issues, including housing shortages, notably in urban areas. This may result in spontaneous settlements and the occupation of public or private lands, both of which offer insecure arrangements for those displaced.

27. Housing conditions in camps, collective centres and informal settlements are often inadequate. Limited access to services such as water, sanitation and hygiene, combined with overcrowded conditions, represents a serious health risk, as illustrated by the COVID-19 pandemic. Limited adequate housing opportunities also represent an increased risk of sexual and gender-based violence, including in female-headed households, either because of the precarious living conditions²⁶ or because women may be forced into harmful practices in exchange for securing housing for their family.²⁷

28. As displacement becomes prolonged and resources become depleted, an increasing number of internally displaced persons may face eviction,²⁸ leading to secondary displacement for failure to pay rent, illegally occupying somebody's property or residing on land that the owner wants to reclaim.

Durable solutions to housing, land and property issues

29. A durable solution is achieved when internally displaced persons no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement.²⁹ Housing, land and property constitute a critical component in making progress towards achieving durable solutions. In fact, six of the eight criteria set out in the Framework on Durable Solutions for Internally Displaced Persons to determine whether a durable solution has been achieved relate to housing, land and property.³⁰

30. Durable solutions can be achieved through return, local integration and settlement elsewhere in the country. In situations of conflict and generalized violence, displaced people's properties are often deliberately occupied, looted, destroyed and expropriated with the aim of ensuring that a particular political, ethnic or religious group leaves or is prevented from returning. Measures to that effect include the allocation to or occupation by the authorities' political or military supporters of empty property and land; the removal, destruction or tampering of land registries; and the implementation of laws to limit or cancel

²⁴ International Federation of Red Cross and Red Crescent Societies, "Strengthening IFRC responses to internal displacement in disasters: challenges and opportunities", 2019.

²⁵ A/75/207.

²⁶ A/HRC/29/34/Add.2, para. 58.

²⁷ OHCHR, *Women and the Right to Adequate Housing* (2012).

²⁸ Joint Internally Displaced Person Profiling Service, "Profile at a glance: Somalia, Mogadishu", 2016.

²⁹ Framework on Durable Solutions for Internally Displaced Persons (A/HRC/13/21/Add.4).

³⁰ *Ibid.*, para. 53.

the housing, land and property rights of displaced people. Other obstacles to return may include the presence of landmines and the lack or loss of personal and property documentation to claim housing, land and property rights and benefit from restitution, compensation or reconstruction assistance. The absence of appropriate housing for displaced persons is often used to discourage local integration and influence the dynamics of a particular demographic group.

31. While responses in disaster situations are often less politically sensitive than those in conflict, pre-existing patterns of discrimination may affect the delivery of assistance to certain groups. Support to durable solutions, notably in relation to housing, land and property, is often neglected because it is assumed that disaster-related displacement is a short-term phenomenon. There are, however, numerous examples of protracted displacement following disasters.³¹ A specific challenge in finding durable solutions to displacement in disaster situations is that some settlement options may be impossible in areas where the risk of a disaster occurring cannot be sufficiently reduced or because the land of origin is no longer habitable.

32. Causes of internal displacement often overlap, and displacement is often a repetitive process. Insecure or limited access to land and inadequate housing conditions during displacement increase vulnerability to renewed displacement. For instance, individuals displaced by drought may be obliged to join urban informal settlements. This in turn increases their risk of being forcibly evicted for encroachment or during urban renewal projects. Individuals who settle in hazard-prone areas are also at risk of being displaced again by a subsequent disaster. Repeated displacements decrease the resilience of displaced persons, weaken their capacity to achieve durable solutions and expose them to protracted displacement.

Security of tenure, displacement and durable solutions

33. Insecurity of tenure puts people at higher risk of displacement, including from forced eviction. Tenure refers to the relationship of individuals and groups to land and housing, which can be defined legally, informally or customarily. Tenure can take forms such as rental accommodation, cooperative housing, lease, owner occupation, emergency housing and informal settlements, including occupation of land and property.³² Security of tenure exists when the relationship to land and housing enables one to live in security, peace and dignity. A degree of security of tenure should be guaranteed in order to protect people from forced eviction, harassment and other threats, regardless of the form of tenure.³³

34. With the aim of providing such protection, authorities elaborate land governance rules that define tenure systems and determine who can use what resources, for how long and under what conditions.³⁴ Most Governments focus on formally registered tenure arrangements, while informal or customary land rights often lack legal recognition and protection. Lands governed by informal or customary arrangements are often considered public lands, which allows the authorities to dispose of them or grant concessions in respect of them. It is estimated that 75 per cent of the world's population does not have access to formal systems to register and safeguard their land rights.³⁵ The lack of government recognition and protection of legitimate customary tenure rights in a context of increased competition has led to forced evictions, land grabbing, displacement and inadequate compensation.

35. Security of tenure is also threatened during displacement and when trying to achieve durable solutions. The non-recognition of customary and informal land rights makes it difficult for displaced persons to prove their tenure rights and access restitution, compensation or humanitarian and development assistance. Research into housing options

³¹ Walter Kälin, *Internal Displacement in the Context of Disasters and the Adverse Effects of Climate Change: Submission to the High-level Panel on Internal Displacement by the Envoy of the Chair of the Platform on Disaster Displacement* (Platform on Disaster Displacement, 2020).

³² Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), para. 8 (a).

³³ *Ibid.*

³⁴ Food and Agriculture Organization of the United Nations (FAO), "Land tenure and rural development", Land tenure series 3 (2002).

³⁵ World Bank and International Federation of Surveyors, "Fit-for-purpose land administration", 2014.

proposed to urban informal settlers displaced by disasters shows that there is a tendency to overlook assistance to informal settlers and to propose relocation rather than an upgrade in the place of origin, while allowing those with formal ownership in the same area to remain.³⁶ This represents discrimination on the basis of tenure, which is prohibited under human rights law.³⁷

36. The ability to guarantee security of tenure supposes efficient land and urban governance. Efforts at improving security of tenure through titling policies formalizing customary land rights require strong institutional capacity to maintain land registries. Processes focusing on individual titling often undermine collective rights to land, for example in respect of activities such as gathering, grazing, hunting and fishing. Collective titling is seen as a more effective way to improve tenure while safeguarding access to common land and resources. It allows communities to maintain their customary land management processes and makes them more resilient to external pressures to sell land.

37. Situations of conflict and disaster compound the weaknesses of land and urban administration systems, as well as access to justice, further limiting the capacity of the authorities to protect security of tenure and respond to disputes arising from massive displacement and occupation.

Specific groups

38. Although most internally displaced persons can be considered vulnerable in terms of their housing, land and property rights, women, indigenous peoples and pastoralists face specific challenges in relation to tenure. Displaced children, older persons and persons with disabilities³⁸ too have specific needs that need to be integrated into response programmes. Weak security of tenure is often a reflection of the discrimination and socioeconomic marginalization affecting certain groups and individuals. During displacement, insecurity of tenure exacerbates pre-existing vulnerabilities and limits opportunities to improve living conditions.³⁹ Indigenous peoples, women, minorities and members of certain caste systems, among others, tend to have weak security of tenure and to have customary or subsidiary land rights limited to such activities as food production, gathering, hunting and fishing.⁴⁰ Because these rights are often not recognized and because vulnerable people often lack awareness, means or trust in institutions, they face difficulties defending their land against confiscation or occupation. Courts are often inaccessible to them and customary dispute resolution mechanisms may discriminate against them.

39. In many societies, patriarchal, statutory, customary, religious and social norms disadvantage women in terms of access to land and in terms of ownership and inheritance of land.⁴¹ In customary settings, most women gain access to land and housing through their male relatives and risk losing these assets in cases of divorce or widowhood, particularly if they do not have male children for whom they can keep the land in custody. Even when ownership is registered, it is mostly under the name of men. This makes it particularly difficult for women to establish their right over the property when their male relative dies or disappears during displacement, conflict or disaster. In such cases, access to personal documentation is essential for women to prove their relationship to the deceased or missing person and initiate inheritance procedures. Women's insecurity of tenure in relation to land and housing threatens food security and the well-being of their families, particularly when they head households.

³⁶ Barbara McCallin and Isabelle Scherer, *Urban Informal Settlers Displaced by Disasters: Challenges to Housing Responses* (Geneva, Internal Displacement Monitoring Centre and Norwegian Refugee Council, 2015).

³⁷ Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) and A/HRC/25/54, paras. 50–59.

³⁸ A/HRC/44/41, para. 86.

³⁹ World Bank Group, "Guidance note on land and conflict: protecting and strengthening the land tenure of vulnerable groups" (June 2018).

⁴⁰ Ibid.

⁴¹ A/HRC/23/44.

40. Indigenous peoples' strong cultural, spiritual and economic attachment to their lands is recognized under human rights law, which details the measures to be taken to protect them from displacement, including by requiring their free, prior and informed consent in respect of any measures and projects affecting the use of their land and natural resources⁴² and of attempts to relocate them away from their land. Indigenous peoples' tenure is mostly customary, with limited legal recognition or protection from the State. Their housing, land and property rights have typically been threatened by displacement caused by conflict, environmental conservation laws and investment projects authorized by the State. Even when national law recognizes indigenous peoples' land rights, limited access to judicial procedures leaves indigenous peoples vulnerable to encroachment. In 1997, the Philippines adopted progressive legislation protecting the land rights of indigenous peoples according to international standards.⁴³ Since limited resources have been allocated for the law's implementation, however, and because of competing interests between the country's mining policy and the law, in 2016 the lands of the Lumad indigenous peoples were still being encroached upon by public and private development projects, extractive companies, large-scale plantations and small-scale illegal mining and logging activities carried out by local paramilitary groups.⁴⁴

41. Pastoralists have a unique relationship to land as their livelihoods are based on mobility and access to extensive territories for their livestock. Droughts, desertification and land degradation, exacerbated by the slow-onset impact of climate change, require increased mobility and access to common lands to compensate for the shrinking availability of good pastures. In parallel, the use of pasture areas for development purposes and the individual titling of common lands limit their mobility and increase land degradation and overgrazing by concentrating livestock in reduced areas.

42. Land and environmental human rights defenders, especially women and indigenous peoples defenders, are increasingly the targets of violent acts, including killings, intimidation, criminalization, forced eviction and displacement.⁴⁵ Their role is essential in raising awareness among the public and the authorities of land rights and of the impact of development projects and business operations on human rights, natural resources, health and the environment.⁴⁶

D. Addressing housing, land and property issues and internal displacement: challenges and opportunities

43. Strong tenure and urban governance systems are required to prevent or mitigate the effects of displacement. Weaknesses in these systems exacerbate the risk and impact of displacement for marginalized communities in high-, medium- and low-income countries. Even when such systems do exist, their functioning may be further compromised by the fact that displacement, conflict and disaster are often accompanied by the destruction, damage and loss of documents and ownership records.

44. Housing, land and property measures based on respect for human rights norms should therefore take into account the full spectrum of humanitarian, development and peacebuilding responses. While some housing, land and property issues require emergency responses when conflict or disasters suddenly deprive internally displaced persons of basic shelter, food and water and multiply disputes, improving secure access to land and adequate disaster resilient housing requires long-term efforts to strengthen laws, policies and institutions for sustainable land and urban governance. Such frameworks and accompanying systems contribute to reducing the risks of displacement associated with housing, land and property and to improving responses to displacement. Efforts to improve or guarantee security of tenure and adequate housing must be central to addressing the specific needs of displaced persons while

⁴² United Nations Declaration on the Rights of Indigenous Peoples, arts. 10 and 32.

⁴³ Indigenous Peoples' Rights Act of 1997.

⁴⁴ A/HRC/32/35/Add.3, para. 76.

⁴⁵ Human Rights Council resolution 40/11; A/HRC/39/17.

⁴⁶ Ibid.

ensuring they are included in and benefit from structural development efforts to strengthen land and urban governance systems and improve the rule of law and access to justice.

45. The participation of internally displaced persons and people at risk of displacement in the design, planning and implementation of decisions and programmes affecting their land and housing rights should be at the heart of responses by Governments, local authorities and humanitarian and development actors, to ensure that their expectations are considered, responses improved and durable solutions more likely to be achieved.⁴⁷

Improving security of tenure

46. Improving security of tenure helps to prevent housing, land and property disputes, reduce displacement and achieve durable solutions. Forced evictions often cause initial or renewed displacement, impoverishment and a deterioration of living conditions in the new location. States have the primary responsibility for preventing forced evictions and providing remedies. Evictions may be necessary in the case of justified public interest in certain development projects and to protect property rights after widespread secondary occupation following conflict or to save lives through evacuation or relocation from hazard-prone areas if preventive measures are insufficient to reduce risk. Even in these circumstances, evictions should be in line with national law and international human rights law and standards, including due process.⁴⁸

47. Regardless of the type of tenure held by potential evictees, affected groups should take part in decisions on alternatives to evictions, evacuations and planned relocations. Alternatives could include the regularization and upgrading of informal settlements and improvements in terms of access to services, housing conditions and resilience to disasters. Using eviction impact assessment tools helps to understand the human and financial costs of evictions and inform the response.⁴⁹ Assessments should take into account the differential impact on specific groups, including displaced persons, indigenous peoples, women, children, persons with disabilities, minorities and older persons.

48. If eviction is unavoidable, affected groups should participate in decisions regarding alternative housing, location and compensation and be afforded the right to due process, including by receiving appropriate notices, making appeals and seeking remedies. Importantly, evictions should not result in homelessness. Planned relocations should involve a full resettlement process to ensure access to adequate housing, notably security of tenure, accessibility for people with special needs, access to livelihood opportunities, services and social and economic infrastructure.⁵⁰ Access to alternative lands of equal value should be provided.⁵¹

49. As part of States' obligation to protect persons within their territory from human rights abuses by third parties, authorities should develop laws and policies limiting the risk of eviction and displacement posed by development projects, business-related activities and speculation on land and real estate. Such laws should ensure the free, prior and informed consent of indigenous peoples. The Guiding Principles on Business and Human Rights highlight the responsibility of States to provide a regulatory environment conducive to businesses' respect for human rights in relation to corporate laws or laws regulating land or mining concessions, and the responsibility of businesses to exercise due diligence to ensure that their activities do not violate human rights.

50. Preventing evictions also protects health.⁵² During the COVID-19 pandemic, staying at home and keeping a safe physical distance became the two main ways of limiting the spread of the disease. The pandemic has exacerbated the vulnerability of socioeconomically

⁴⁷ A/72/202.

⁴⁸ A/HRC/4/18; United Nations Human Settlements Programme (UN-Habitat) and OHCHR, "Forced evictions", fact sheet No. 25/Rev.1, 2014.

⁴⁹ UN-Habitat and OHCHR, *Losing Your Home: Assessing the Impact of Eviction* (Nairobi, UN-Habitat, 2011).

⁵⁰ A/75/207, para. 46.

⁵¹ A/HRC/4/18, para. 43.

⁵² Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000), para. 16.

marginalized groups, including displaced persons living in insecure and crowded conditions with limited access to water and sanitation. Moreover, its economic impact has exposed many to forced evictions for failure to pay their rent or mortgage. Positive measures taken include moratoriums on evictions and utility cut-offs.⁵³ Others include subsidies for tenants and small-scale landlords, the deferral of mortgage payments and temporary caps on rents to ensure that the health crisis does not become a housing crisis.⁵⁴

51. Forced evictions frequently target already displaced people who settle on other people's lands or houses for lack of alternatives. While States have a responsibility to protect the right to property, they also need to protect the rights to adequate housing and livelihood of internally displaced persons. To avoid disputes between displaced persons and host communities over occupation, resources and environmental impacts, authorities should consult and compensate local rights holders, for example by renting the occupied land or extending the benefit of services or infrastructure developed for displaced persons to neighbouring populations.

52. One recurrent difficulty faced by the authorities and humanitarian actors is how to identify who to consult and compensate due to lack of clarity over land rights. Mindful of this, humanitarian actors supporting authorities have developed country-specific housing, land and property profiles⁵⁵ describing the legal and practical aspects of tenure. The Global Shelter Cluster has produced shelter and due diligence guidelines,⁵⁶ including specific ones for urban settings,⁵⁷ to ensure that those building shelters or providing shelter assistance identify and respect existing land rights. Another good practice for improving security of tenure is to encourage the establishment of agreements identifying the respective roles and responsibilities of tenants and owners, and of the beneficiaries of shelter assistance and the owners of shelters. Legal aid and mediation services for disputes related to occupation, rental contracts and inheritance procedures also contribute to improving security of tenure, protecting housing, land and property rights and defining eligibility for reconstruction assistance and remedies.

53. Documenting housing, land and property rights is key for improving security of tenure, preventing forcible displacement and achieving durable solutions. Conflicts and disasters make this particularly challenging. In Honduras, the authorities initiated a project to register and protect abandoned properties to facilitate their restitution.⁵⁸ Land registries are often damaged or missing and housing, land and property documentation lost. The level of destruction, the duration of displacement and the removal of physical boundary markers make it difficult to identify legal, physical and alternative evidence of possession. The "secure enough" approach is a good practice that aims to achieve as much legal certainty on tenure and protection for beneficiaries as possible. It consists of accepting social and informal evidence of tenure where formal documentation is limited. It contributes to preventing the exclusion of internally displaced persons from shelter assistance because of discrimination on the basis of tenure.⁵⁹

54. Land tools used in development contexts to help countries improve land information systems have been adapted to post-disaster and post-conflict situations to document housing, land and property rights. The Social Tenure Domain Model, a gender-responsive participatory land information and management tool for recording formal and informal tenure

⁵³ See www.newamerica.org/future-land-housing/reports/land-housing-and-covid-19/evictions-and-covid-19.

⁵⁴ A/75/148.

⁵⁵ See www.sheltercluster.org/resources/library/hlp-country-profiles.

⁵⁶ See www.sheltercluster.org/sites/default/files/docs/4.2_gsc_land_rights_and_shelter_the_due_diligence_standard.pdf. See also Sphere Association, *The Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response*, 4th ed. (London, Shortrun Press, 2018), in particular the chapter on shelter and settlement.

⁵⁷ Norwegian Refugee Council and others, *Security of Tenure in Urban Areas: Guidance Note for Humanitarian Practitioners* (London, International Institute for Environment and Development, 2017).

⁵⁸ Hannah Entwisle Chapisat, *Working Together Better to Prevent, Address and Find Durable Solutions to Internal Displacement: GP20 Compilation of National Practices* (2020).

⁵⁹ Norwegian Refugee Council, *Securing Tenure in Shelter Operations* (2019), updated edition.

rights, is adapted to rural and urban settings. Community-mapping based on pre-conflict or pre-disaster satellite images is used to link people to spaces to facilitate the identification of pre-existing buildings in cases of heavy destruction. Individual declarations of tenure can be complemented by supporting documents and pictures uploaded through the Model software. Returnees and displaced persons can contribute to the mapping exercise with individual declarations of tenure validated by neighbours and community leaders. This method has supported authorities in Iraq to improve protection of the tenure rights of the Yazidi population using community mapping, resulting in the issuance of occupancy certificates endorsed by local authorities.⁶⁰

Reducing risk and improving access to adequate and resilient housing

55. Measures to prevent and mitigate the risk of disaster-related displacement can contribute to the right to adequate housing. Analysing the vulnerability factors to natural hazards is essential to reduce the risk of displacement. These factors combine socioeconomic marginalization, personal vulnerabilities, inadequate housing and infrastructure, exposure to disaster and policy aspects such as poor governance, insecure tenure and lack or non-implementation of disaster risk reduction policies.

56. To reduce and prevent the risk of displacement linked to disasters and its human rights impacts, States should develop and implement appropriate laws and policies, for example on disaster risk reduction, human mobility, environmental protection and sustainable development, including in respect of urban planning and housing, land and property issues.⁶¹ The National Policy on Climate Change and Disaster-Induced Displacement of Vanuatu is an example of an integrated policy that combines all the above-mentioned elements a human rights, development and humanitarian component.⁶² Laws protecting pastoralists' tenure rights preserve livelihoods and limit disputes with farmers and risks of involuntary displacement. Good practices include protecting access to common lands and recognizing pastoralists' mobility patterns through the establishment of migratory corridors and the designation of "home territories" to give priority access to natural resources.⁶³

57. One way to reduce vulnerability is to develop tools to assess risk factors and develop responses accordingly. In Uganda, the authorities have carried out such a hazard risk assessment, created a database that includes information on people living in landslide-prone areas and established a 10-year programme for the voluntary relocation to safer areas that envisions the provision of land, housing, infrastructure and income-generating activities to residents in at-risk areas.⁶⁴ Mapping housing, land and property rights in at-risk areas is a preparedness measure that protects those rights and reduces the risk of forcible displacement.

58. Measures to improve the capacities of populations to cope with stress factors such as drought, the cold or floods can allow people to remain where they are and maintain their livelihoods. Development projects such as climate-smart agriculture projects that focus on adaptation, resilience and the sustainable use of resources have supported pastoralists in the Sahel to manage their rangeland more sustainably, limiting land degradation and improving livestock health.⁶⁵

59. Other preparedness and contingency measures to avert or mitigate the risk of disaster include identifying safe evacuation sites and informing people about the risk of disaster and how to protect themselves. The creation of climate land banks, whereby States purchase or reserve land for relocating people displaced due to climate change, represents an innovative preparedness measure.⁶⁶ Reducing the exposure of populations in disaster-prone areas by

⁶⁰ See <https://reliefweb.int/report/iraq/ensure-tenure-security-iraqi-yazidi-people-un-habitat-handed-over-occupancy-certificates>.

⁶¹ A/75/207, para. 41.

⁶² See also www.fmreview.org/sites/fmr/files/FMRdownloads/en/recognising-refugees/GP20.pdf.

⁶³ World Bank Group, "Guidance note on land and conflict".

⁶⁴ See www.globalprotectioncluster.org/wp-content/uploads/Comparative-Experiences-on-Preventing-Addressing-and-Resolving-Internal-displacement-ENG.pdf.

⁶⁵ See www.worldbank.org/en/topic/climate-smart-agriculture.

⁶⁶ Asian Development Bank, *Financing Affordable Housing in Yangon* (Manila, 2019), pp. 62–63.

retrofitting housing and protective infrastructure⁶⁷ should always be prioritized over relocation, as it allows populations to preserve their cultural, social and economic habits. Planned relocation should be envisaged only as a last resort, when the risk cannot be reduced sufficiently or when return is impossible because lands have disappeared.⁶⁸ States and international actors involved in relocation should exercise due diligence to ensure that disaster risk reduction measures such as no-build zones are not used in a discriminatory manner to prohibit reconstruction or return.⁶⁹

60. Internally displaced persons, people at risk of displacement and receiving communities should participate in the planning and design of programmes affecting them.⁷⁰ Outreach and inclusion measures should be taken to ensure that groups with specific needs, including older persons, women, children and persons with disabilities, participate in the design of and benefit from measures on evacuation, relocation, housing and livelihoods adapted to their specific needs.⁷¹

61. Housing solutions should be diversified to respond to various needs. Solutions can vary and evolve. They can range from basic shelter assistance in camps or collective centres, to cash for rent and the rehabilitation of housing. In Ukraine, the government housing programme for internally displaced persons and local initiatives in the city of Mariupol offer a range of housing options for displaced persons, from temporary or permanent housing to free rental or rent-to-own options. These programmes are open to the most vulnerable, older persons, young families and middle-income households. Furthermore, internally displaced persons are included as a category eligible for social housing.⁷²

62. Transitioning from temporary shelter to adequate housing is key to achieving durable solutions. Whether internally displaced persons choose to resettle, integrate locally or return, they are entitled to safe and secure housing, access to livelihoods and services. The prevalence of protracted displacement underlines the necessity for early planning to avoid potential long-term displacement. This requires introducing urban planning to settlements, connecting them to services and planning for potential expansion if appropriate. A challenge is to identify safe, suitable and undisputed land. Long-term shelter programming requires community engagement to support the design of housing and settlements and ensure that they correspond to people's needs and aspirations. Absent such involvement, there is that risk that newly built settlements will not be inhabited and that people will return to risk-prone locations or informal settlements. Similarly, closing camps and settlements and transferring displaced persons to their places of origin or other destinations without their appropriate involvement or without the right conditions being in place is likely to result in secondary displacement and heightened protection risks.

63. Most displacement takes place in countries struggling to provide housing and services to the urban poor in a context of rapid urbanization. The influx of internally displaced persons in some cases exacerbates the pressure on housing and services. Lacking affordable alternatives, the most vulnerable displaced tend to settle in informal settlements, reinforcing spatial segregation. Informal settlements are a symptom of weak urban governance, often cumulating displacement risk factors, exposure and vulnerability in poor, crowded urban areas characterized by precarious housing, lack of infrastructure and exposure to hazards.⁷³

⁶⁷ Christel Rose and Florentina Debling, *Words into Action: Developing National Disaster Risk Reduction Strategies* (Geneva, United Nations Office for Disaster Risk Reduction, 2019), p. 11.

⁶⁸ Georgetown University, International Organization for Migration and the Office of the United Nations High Commissioner for Refugees, *A Toolbox: Planning Relocations To Protect People from Disasters and Environmental Change* (2017).

⁶⁹ Walter Kälin, *Internal Displacement in the Context of Disasters and the Adverse Effects of Climate Change*.

⁷⁰ International Federation of Red Cross and Red Crescent Societies, *Participatory Approach for Safe Shelter Awareness* (Geneva, 2011).

⁷¹ Inter-Agency Standing Committee, *IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters* (Brookings-Bern Project on Internal Displacement, 2011).

⁷² Hannah Entwisle Chapuisat, *Working Together Better to Prevent, Address and Find Durable Solutions to Internal Displacement: GP20 Compilation of National Practices* (2020), p. 195.

⁷³ Internal Displacement Monitoring Centre, *Global Report on Internal Displacement 2019*, p. 83.

64. Most future disaster-related displacement is expected to occur in coastal or riverine cities.⁷⁴ In areas where risks are high, addressing the housing needs of displaced persons requires policies and programmes that ensure that disaster risk reduction and management measures are integrated into the reconstruction of housing and infrastructure through appropriate land use and urban planning. While efforts to identify at-risk areas and enforce urban planning can reduce risks and the sprawl of informal settlements, they are unlikely to succeed if affordable and adequate housing options are not offered to the urban poor. Housing policies should therefore ensure that resilient housing is accessible to them.

65. A challenge of reconstruction in emergency situations is how to meet the urgent need to offer housing solutions to the displaced and the time required to develop well-thought urban plans for cities recovering from disaster or conflict, and with limited urban governance capacity. Good practices include projects that combine transitional shelter assistance on site with the possibility to upgrade housing based on a build back better approach that strengthens resilience to future disasters. In Haiti, the Katye project used a participatory community-mapping and planning approach to identify the location of houses and at-risk areas and to agree on disaster risk reduction measures and on modifications to neighbourhoods to improve living conditions and the resilience of housing to disasters.⁷⁵ Multisectoral, area-based and participatory approaches improve social cohesion and result in settlements designed to meet the needs and rights of residents.

66. Addressing the specific needs of internally displaced persons is challenging as those needs often merge with those of other urban poor, who share similar living conditions. Urban profiling exercises that compare the situation of displaced persons and host populations are instrumental in providing data on which to base adequate responses. Data collected in Somalia identified areas where displaced persons had specific or similar needs to other urban poor and showed that half of those displaced wanted to integrate into local society. While previous efforts by the authorities had focused on return programmes for urban internally displaced persons, the results of the profiling exercise convinced the authorities to consider facilitating local integration. The profiling exercise contributed to the development of a durable solution strategy, and assistance for internally displaced persons was complemented by a long-term urban development approach to integration.⁷⁶

67. Displacement to urban areas amplifies the global movement of urbanization and is unlikely to be reversed, particularly as displacement becomes protracted. Durable solutions in urban settings therefore require integrating internally displaced persons into urban planning and housing policies, as some good practices in Somalia and Colombia illustrate.⁷⁷ Such contexts highlight the crucial importance of the humanitarian/development nexus and the fact that the technical expertise of development actors can support sustainable urban planning that integrates the needs of internally displaced persons into the broader spatial development needs of a city.⁷⁸ This contributes to durable solutions and progress towards the achievement of Sustainable Development Goal 11 on making cities and human settlements inclusive, safe, resilient and sustainable.

Addressing disputes over housing, land and property

68. Disputes over housing, land and property often arise in post-conflict displacement situations and in development and disaster-related displacement settings, where poor land and urban governance can lead to violations of housing, land and property rights. Addressing and preventing such violations require a combination of short-term measures, to address violations linked to displacement, and longer-term structural and institutional reforms, to improve good governance in the justice, land and urban administration sectors.

⁷⁴ Ibid., p. 84.

⁷⁵ Huma Gupta, *Home Sweet Home: Housing Practices and Tools that Support Durable Solutions for Urban IDPs* (Geneva, Internal Displacement Monitoring Centre, 2015).

⁷⁶ Hannah Entwisle Chapuisat, *Working Together Better to Prevent, Address and Find Durable Solutions to Internal Displacement: GP20 Compilation of National Practices* (2020), p. 160.

⁷⁷ Ibid., p. 171; Huma Gupta, *Home Sweet Home*, p. 47.

⁷⁸ See www.un.org/internal-displacement-panel/sites/www.un.org/internal-displacement-panel/files/published_iied_jips_unh_submission.pdf.

69. Conflict-induced displacement leads to numerous violations of housing, land and property rights, often as part of discriminatory strategies to displace certain groups based on their religious, ethnic, social or political affiliation and to prevent their return. Post-conflict efforts to provide reparations for such violations through restitution and compensation programmes usually face strong political resistance. The systematic inclusion of housing, land and property provisions in peace agreements and transitional justice processes is essential for putting the issue on the agenda and monitor implementation. United Nations institutions have a key role to play in supporting and monitoring peace efforts and should ensure that housing, land and property issues are considered throughout its peacekeeping, human rights and development activities.⁷⁹

70. Peace agreements should comprehensively cover housing, land and property issues. They should address violations perpetrated during the conflict and, where relevant, also address pre-conflict grievances and the structural causes and inequalities that led to the conflict.⁸⁰ For instance, the peace agreement reached by the Government of Colombia and the Revolutionary Armed Forces of Colombia-People's Army (FARC-EP)⁸¹ combines a restorative approach that provides remedies for dispossession and a transformative approach taking the form of a comprehensive rural land reform policy.

71. Good practices regarding housing, land and property provisions in peace agreements include: the right to return home, the right to restitution and compensation, the obligation to set up a dispute resolution and/or a transitional justice mechanism on housing, land and property issues,⁸² the repeal of discriminatory housing, land and property legislation, the reform of the land governance structure and the recognition of the housing, land and property rights of specific groups such as women, children, indigenous peoples, pastoralists and holders of customary and informal land rights.

72. The creation of dedicated housing, land and property dispute resolution mechanisms is recommended in post-conflict settings, as the large volume of claims could otherwise clog the administrative and judicial systems. The provision of remedies for past violations of housing, land and property rights is key for the achievement of durable solutions, peacebuilding, development and a return to the rule of law. Experience with dispute resolution mechanisms for mass claims processes shows uneven results. While guidance exists on how to design human rights-based restitution and compensation processes,⁸³ key challenges remain. There is a delicate balance to be found in ensuring the inclusiveness of the process, recognizing the wide range of housing, land and property rights and dealing with the complexity and length of the process, factors which risk delaying the achievement of durable solutions. In most situations, both restitution and compensation should be offered to claimants, who should choose the solution that best corresponds to their needs and aspirations.

73. Practical difficulties exist in cases of protracted and repeated displacement and in situations where several waves of dispossession have led to overlapping claims and numerous bona fide buyers. In such cases, a strict focus on restitution as a preferred remedy may lead to violations of the rights to adequate housing or to non-interference with the home of the occupant. The European Court of Human Rights has recognized this dilemma and accepted as an effective remedy compensation in lieu of restitution in the case of Greek Cypriots displaced from the northern part of Cyprus. The Court considered that, after 35 years of displacement, a blanket restitution policy could give rise to "disproportionate new wrongs" against the occupants of such properties.⁸⁴ In another context of prolonged dispossession, the South Africa restitution process offered the possibility to choose between restitution and

⁷⁹ International Organization for Migration, "Guidance note: integrating housing, land and property issues into key humanitarian, transitional and development planning processes", 2018; Guidance note of the Secretary-General, "The United Nations and land and conflict".

⁸⁰ Principles on housing and property restitution for refugees and displaced persons, principle 22.4.

⁸¹ Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace (S/2017/272, annex II).

⁸² A/73/173.

⁸³ Brookings-Bern Project on Internal Displacement, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers* (2008); and FAO and others, *Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the Pinheiro Principles* (2007).

⁸⁴ *Demopoulos and others v. Turkey*, decision, 1 March 2010.

compensation up to 1913 and established a land redistribution scheme for earlier cases of dispossession.⁸⁵

74. Another typical challenge is the lack of formal evidence to prove property, either because formal records are incomplete or damaged, or because dispossessed properties are held under informal or customary arrangements. Alternative forms of evidence of residence such as utility bills, witness testimonies, intimate knowledge of properties corroborated by facts on the ground or, increasingly, digital trails, can be accepted for restitution purposes to overcome this difficulty.

75. Confronted with the complexity and length of restitution processes and required institutional capacity, local and traditional dispute resolution mechanisms can represent an alternative to address housing, land and property disputes. They generally benefit from social legitimacy, are accessible and affordable to most people and aim to ensure the social cohesion of the community. A significant limitation, however, is that they may perpetuate power asymmetries between the parties or discriminate against women and girls, minorities or outsiders. This shortcoming can be addressed by considering customary justice as a mechanism of first instance or by creating hybrid dispute mechanisms where officials are associated to customary leaders and ensure that decisions respect national law and international standards. The provision of legal aid to claimants and initiatives to train traditional dispute resolution actors on mediation and arbitration techniques contribute to improving decision outcomes.

76. The use of information and communications technology can make a substantial contribution by involving displaced persons in the protection and documentation of violations of their housing, land and property rights. ICT has also been used in the Colombian transitional justice process to encourage the participation of the population in documenting patterns of human rights violations and claims, notably on housing, land and property.⁸⁶ Promising initiatives propose to build on the experience in Colombia and to engage displaced people in documenting their housing, land and property claims by uploading information on a mobile application during the conflict. The application provides advice on alternative evidence that can be used. This participatory archiving process allows displaced persons to play an active role in their restitution claims.⁸⁷

77. A key lesson from experiences with mass claims seeking restitution for violations of housing, land and property rights is that the design of such mechanisms is as much a political as it is as a human rights and technical issue. Practical, financial issues and limited institutional capacity may reduce the scope of restitution and compensation mechanisms. Adopting a comprehensive approach to the resolution of housing, land and property issues offers the possibility of finding solutions that go beyond restitution and compensation. The work done by transitional justice processes to establish a common understanding of past violations through participatory processes offers a moral recognition of harm that can represent a complementary form of reparation.⁸⁸ Transitional processes in Kenya,⁸⁹ the Philippines⁹⁰ and South Africa⁹¹ have recognized the role of land grievances in conflict and the need to acknowledge the wrong done to specific groups in that regard.

⁸⁵ Rhodri C. Williams, “The contemporary right to property restitution in the context of transitional justice”, International Center for Transitional Justice, Occasional Paper (May 2007). See also www.gov.za/issues/land-reform#.

⁸⁶ Jean-Marie Chenou, Lina P. Chaparro-Martínez and Ana María Mora Rubio, “Broadening conceptualizations of transitional justice through using technology: ICTs in the context of *Justicia y Paz* in Colombia”, *International Journal of Transitional Justice*, vol. 13, No. 1 (March 2019).

⁸⁷ John Unruh, Emily Frank and Matthew Pritchard, “A digital advance for housing, land and property restitution in war-affected States: leveraging smart migration”, *Stability: International Journal of Security and Development*, vol. 6, No. 1 (October 2017).

⁸⁸ A/73/173.

⁸⁹ Final report of the Truth, Justice and Reconciliation Commission of Kenya (<https://digitalcommons.law.seattleu.edu/tjrc-core/5/>).

⁹⁰ Philippines Transitional Justice and Reconciliation Commission, *Land Report: Dealing with the Past and Land Dispossession in the Bangsamoro* (Cotabato City and Manila, 2017).

⁹¹ South Africa, Restitution of Lands Act (1994).

78. Other solutions include providing reconstruction assistance or alternative housing solutions for tenants and secondary occupants. Land distribution can address the needs of the landless, who need land for their livelihoods and have little to gain from restitution. Establishing reliable and inclusive land administration systems also contributes to preventing and addressing disputes over housing, land and property. These measures require development actors to provide technical expertise to support States in improving the efficiency of their land and urban management systems. The fit-for-purpose land administration approach⁹² developed by the World Bank to respond to the limitations of systems based on formal titling offers an affordable, sustainable and participatory solution for recording all types of tenure rights in situations where land registries are inaccurate or missing, a frequent occurrence in displacement situations.

IV. Conclusions and recommendations

79. **Addressing housing, land and property issues in contexts of internal displacement requires a comprehensive approach across various sectors of intervention, the humanitarian/development/peace nexus and the disaster risk reduction/climate change adaptation nexus. State actions often require combining preventive, protective, restorative and transformative measures through the adoption of laws and policies to strengthen legitimate land and housing rights before and during displacement and in support of durable solutions. Measures specifically supporting the housing, land and property rights of internally displaced persons should be complemented by the inclusion of internally displaced persons into broader land and housing schemes. Considering the human rights impact of housing, land and property measures, the participation of affected populations in the identification of problems and in the design of solutions is a must, notably when envisaging the adoption of fit-for-purpose land and urban administration systems.**

80. **The Special Rapporteur calls upon all stakeholders to:**

(a) **Address housing, land and property issues in a multidimensional manner by forging partnerships with a variety of stakeholders, including internally displaced persons and affected communities, and to coordinate and share respective expertise between national and local authorities, humanitarian and development actors, particularly with experts on land administration and urban planning, to design coherent and sustainable programmes benefiting internally displaced persons and others;**

(b) **Raise awareness on housing, land and property rights and provide legal aid to displaced persons and people at risk of internal displacement to help them obtain the civil documentation necessary to make housing, land and property claims, as well as inheritance, restitution and compensation claims, and to encourage the signature of lease agreements to protect tenure;**

(c) **Ensure that the specific legal and social barriers to women's enjoyment of housing, land and property rights are identified and addressed as part of activities supporting tenure, shelter and housing.**

81. **The Special Rapporteur calls upon States and peace negotiators to systematically include housing, land and property issues in all post-conflict negotiations and peace agreements.**

82. **The Special Rapporteur calls upon States to:**

(a) **Prevent and resolve housing, land and property disputes by ensuring recognition and protection of legitimate rights to land and natural resources, including collective, customary and informal land rights, through adequate laws and policies and to consider adopting community-based approaches such as the fit-for-purpose land administration tools;**

⁹² World Bank and International Federation of Surveyors, "Fit-for-purpose land administration".

- (b) Ensure that laws, policies and programmes on internal displacement address housing, land and property rights;
- (c) Ensure that laws, policies and programmes related to urban and land administration, disaster risk reduction, climate change adaptation, business activities, development and conservation respect housing, land and property rights and do not result in displacement or obstacles to durable solutions;
- (d) Protect women's housing, land and property rights regardless of age, marital, civil or social status and independently of women's relationship with male household or community members;
- (e) Not discriminate against displaced persons on the basis of tenure in relation to access to services, remedies for forced evictions, expropriation or relocation, and eligibility for national and municipal housing schemes and assistance;
- (f) Prioritize the upgrading and retrofitting of informal settlements and protective infrastructure over relocation;
- (g) Ensure that consultation, information and participation of internally displaced persons is central to the design, approval and implementation of decisions affecting their housing, land and property rights;
- (h) Establish, in cases of widespread housing, land and property violations, fair and effective dispute resolution mechanisms to address claims for restitution and compensation in line with the principles on housing and property restitution for refugees and displaced persons, allowing claimants to choose between restitution and compensation, and to accept alternative evidence when land registries are inaccurate and most land unrecorded;
- (i) Consider traditional mechanisms as an option that does not prevent claimants from using a dedicated housing, land and property dispute resolution mechanism;
- (j) Support a range of reparations options, mindful of the fact that transitional justice processes tackling historical or recent housing, land and property issues through participatory processes can contribute to reconciliation through moral recognition of past violations and offer alternative forms of reparation when restitution is not possible;
- (k) Reinforce dispute resolution mechanisms with structural reforms addressing the root causes of internal displacement and preventing its reoccurrence. Address chronic pre- and post-conflict/disaster insecure tenure in rural and urban areas, inequalities and discrimination in terms of access to land and housing, which contributes to conflict prevention; this may require measures to address the impact of extreme environmental degradation on land, reforms to land distribution, land and urban governance and the justice system to ensure more accountability and policies promoting equitable development and reintegration;
- (l) Integrate internally displaced persons into social housing policies and develop a variety of housing options, including rental housing.

83. The Special Rapporteur calls upon national human rights institutions to incorporate housing, land and property in human rights monitoring, early warning systems, data collection, legal assistance and complaint handling, and advise States on measures to prevent and address violations of housing, land and property rights.⁹³

84. *The Special Rapporteur calls upon humanitarian, development and peace actors to mainstream housing, land and property into assessments, programmes, advocacy initiatives and peace agreement provisions related to internal displacement. This requires a systematic analysis of the legal and customary framework regulating housing, land and property issues before engagement and the integration of due diligence*

⁹³ A/HRC/41/40; A/75/207.

measures on conflict-sensitivity and security of tenure into project design and implementation, including in relation to shelter assistance.

85. The Special Rapporteur calls upon development agencies and international financial institutions to:

(a) Ensure that projects do not undermine security of tenure and the right to adequate housing and to support States, through the use of tools, to improve land and urban governance;

(b) Explore possibilities to adapt development tools for displacement contexts to improve the registration of different forms of tenure through participatory methods that include internally displaced persons and people at risk of displacement;

(c) Explore and document the extent to which the use of technologies such as smartphones, social media, online tools and geospatial information systems can enable internally displaced persons to access information on their housing, land and property rights, report housing, land and property violations and document their housing, land and property claims to prepare and inform post-conflict restitution and transitional justice processes.

86. The Special Rapporteur calls upon donors to:

(a) Require that projects incorporate the “secure enough” approach;

(b) Support the funding of housing, land and property activities at the outset of crises and through multi-year and multisectoral projects integrating a range of actions, from short-term housing, land and property measures to address the specific needs of internally displaced persons to complementary longer-term measures to improve internally displaced persons’ access to secure tenure and adequate housing through their integration in broader planning processes related to urban areas and land.

87. The Special Rapporteur calls upon businesses to exercise due diligence to ensure that their activities do not have an adverse impact on housing, land and property rights or contribute to environmental degradation resulting in displacement or preventing return. Furthermore, businesses should engage in remediation for any adverse impact on human rights.
