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**FAIR HEARINGS AND IMPLEMENTATION OF COURT ORDERS ARE KEY FOR GUARANTEEING
THE RIGHT TO ADEQUATE HOUSING
ITEM: 3 WRITTEN STATEMENT**

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Amnesty International welcomes and supports the [report](#)¹ by 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 (hereafter the Special Rapporteur), on access to justice for the right to housing. The report highlights the importance of access to justice, particularly for those who live in informal settlements, are victims of, or at risk of forced evictions, and are homeless. It explains the normative framework for access to justice in the context of the right to housing and provides guidance for States to ensure that access to justice is available in the context of the right to housing.

The Special Rapporteur accurately identifies “Where do I go to claim my right to housing” as a central question faced by those who have been denied the right. It is also one that States must provide a clear answer for in their legal systems.

Amnesty International has been actively involved in promoting the realization of the right to adequate housing and holding governments to account for their failure to respect, protect and fulfil this right. Although international and regional human rights standard vis-à-vis the right to adequate housing are fairly well developed, and the majority of countries around the world have committed to upholding these standards, the right remains out of reach for many of those who are discriminated against and/or living in poverty.

Role of the courts

The report of the Special Rapporteur appropriately recognises the importance of the role and responsibility of the judiciary in interpreting and applying domestic law with a view to promoting human rights and ensuring compliance with the State’s international human rights obligations. As the report notes “When courts approve evictions without ensuring alternative accommodation or fail to provide remedies for violations of the right to life caused by homelessness, they violate international human rights and the rule of law and, in so doing, place the State in non-compliance with its international human rights obligations”.²

In a 2018 report Amnesty International documented two cases in Nokwane and Malkerns (in 2014

¹ Access to justice for the right to housing - 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, A/HRC/40/61.

² A/HRC/40/61, para 19.

and 2018 respectively) in Eswatini (formerly Swaziland), where more than 200 people were made homeless. Both cases were the result of protracted legal processes. However, Amnesty International found that even though the evictions had been ordered by the courts, there was no provision made for those who would be rendered homeless as a result of the eviction. The Eswatini authorities failed to put in place the safeguards required by international human rights law including ensuring adequate alternative housing for those who could not provide for themselves. The resulting homelessness impacted not only the right to adequate housing but a wide range of interrelated rights, including the right to education, and access to livelihoods, and food security.³

Disregard and defiance of court orders

Amnesty International has found that the lack of access to effective remedies is one of the most significant barriers that individuals and communities face when trying to claim their right to adequate housing. Access to judicial remedies is one of the primary avenues of redress that available to victims of human rights violations. However, in several cases, even though courts do uphold the right to adequate housing, states sometimes either defy these orders or ignore them. The defiance and lack of implementation of court orders is a particularly egregious denial of effective remedies to victims of human rights violations.

In Italy, Amnesty International, has campaigned for the right to housing of the Roma and for the government to refrain from forcing the Roma to live in segregated housing through the construction of isolated Roma-only camps such as La Barbuta.⁴ We intervened with a supportive amicus curiae brief in the case brought by Associazione Studi Giuridici sull'Immigrazione and Associazione 21 Luglio, which sought the court's recognition of the discriminatory nature of La Barbuta. In a landmark ruling, on 30 May 2015 the civil section of the Tribunal of Rome found that the Municipality of Rome had discriminated against Romani families by housing them in the segregated La Barbuta camp. The court ordered that the municipality stop the discriminatory conduct as described in the ruling and that all adverse effects of such conduct be removed. However as of February 2019, more than three years after the court ruling recognising the inherent discrimination in the use of La Barbuta to house members of the Roma community, Roma residents of La Barbuta continue to live in racially segregated housing.

As noted by the Special Rapporteur, rampant forced evictions and the disregard of court orders calling for halting evictions shine a light on the inherent inequality in our society.⁵ They also signify a serious breakdown in the rule of law. Amnesty International has documented cases in Kenya and Nigeria where court orders halting evictions have been disregarded by governments⁶. As a result, entire communities have been forcibly evicted. Families have been torn apart, livelihoods and people's way of life have been destroyed, and the affected people have been rendered homeless and driven deeper into poverty.

In Kenya, the Sengwer Indigenous people have been targeted for eviction from Embobut forest since the 1980s. These evictions stepped up in 2009 when the government of Kenya concluded that deforestation had endangered the viability of the water catchment, and that all forest residents must be resettled outside the forest. Following this, the Sengwer approached the High Court of Eldoret to challenge their eviction. On 26 March 2013, the High Court of Eldoret issued an injunction requiring government agencies not to interfere "with the petitioners' occupation, control and quiet enjoyment

³ Amnesty International, 'They don't see us as people: Security of tenure and forced evictions in Eswatini', August 2018, Index number: AFR 55/8785/2018

⁴ For example, see Amnesty International, 'On the edge: Roma, forced evictions and segregation in Italy' September 2012, Index number: EUR 30/010/2012.

⁵ A/HRC/40/61, para 71.

⁶ See Amnesty International, 'Families torn apart: Forced eviction of Indigenous people in Embobut Forest, Kenya' May 2018, Index number: AFR 32/8340/2018 and Amnesty International, 'The human cost of a mega-city: Forced evictions of the urban poor in Lagos, Nigeria', November 2017, Index number: AFR 44/7389/2017

of the land they and the members of the Sengwer community enjoy at the Embobut forest”.⁷ Despite this injunction which has been renewed periodically, the state has continued to forcibly evict the Sengwer. Since the first injunction in 2013, the Kenya Forest Service has burned down an estimated 2500 Sengwer homes. The Kenya Forest Service initially claimed to have not received the injunction and later disputed its interpretation.

Similarly, in Nigeria, in response to an announcement by the governor of Lagos State that for security concerns, the authorities would demolish all informal settlements along the waterfronts and creeks in the state, Otodo-Gbame and 13 other waterfront communities initiated a legal action against the government, seeking to enforce their human rights.⁸ On 7 November 2016, the Lagos State High Court, granted an interim injunction restraining the government from demolishing the homes of the claimants, pending the hearing of the case.⁹ Despite this injunction, Lagos State authorities carried out forced evictions on 9, 10 and 11 November 2016 which rendered thousands of people homeless.

Further, on 26 January 2017, the High Court held, in an interim judgement, that the demolition and threatened demolition of Lagos’ waterfront communities, without adequate notice or provision of alternative housing, amounted to cruel, inhuman and degrading treatment or punishment in violation of Section 34 of the Nigerian Constitution. The judge also ordered the parties to explore an out of court settlement through mediation.¹⁰ However, no meetings took place between the government and the community. Instead, on 17 and 21 March and on 9 April 2017 the Lagos State government once again carried out forced evictions in Otodo-Gbame community.

Conclusion

Amnesty International calls on the Human Rights Council to urge all States to:

- ensure that they introduce national legislation recognising the right to adequate housing and prohibiting forced evictions.
- ensure that they implement court orders and injunctions that protect human rights including the right to adequate housing, and,
- identify and remove all barriers to access to justice, including in the case of the right to adequate housing and for those who face discrimination or belong to disadvantaged groups.

^{7 7} Petition no. 6 of 2013 at the High Court of Kenya at Eldoret (David Kiptum Yator, Luka Toroitich Kiraton, Joseph Cheptorus v. The Attorney General, the Kenya Forest Service, Zonal Forest Manager (Marakwet District), the District Commissioner (Marakwet East District), the National Land Commission) 22 March 2013

⁸ Akapo Agemo & Ors v. Attorney General of Lagos State & Ors, Suit No. LD/4232MFHR/16. The Governor, Attorney General, The Commissioner of Physical Planning and Urban Development and the State Commissioner of Police were sued as defendants in this case.

⁹ High Court of Lagos State, Lagos Judicial Division, Akapo Agemo & Ors v. Attorney General of Lagos State & Ors, Suit No. LD/4232MFHR/16- Ruling, 7 November 2016.

¹⁰ High Court of Lagos State, Lagos Judicial Division, Akapo Agemo & Ors v. Attorney General of Lagos State & Ors, Suit No. LD/4232MFHR/16- Ruling, 26 January 2017.