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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

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the thematic 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, Leilani Farha, pursuant to Human Rights Council resolution 31/09.

The report focuses on the "financialization of housing" and its impact on human rights. It examines structural changes that have occurred in recent years whereby massive amounts of global capital have been invested in housing as a commodity, as security for financial instruments that are traded on global markets, and as a means of accumulating wealth. The report assesses the effect of those historic changes on the enjoyment of the right to adequate housing and outlines an appropriate human rights framework for States to address them. The report reviews the role of domestic and international law in that sphere, and considers the application of principles of business and human rights.

The report concludes with a review of States' policy responses to the financialization of housing and some recommendations for more coherent and effective strategies to ensure that the actions of global financial institutions and actors are consistent with ensuring access to housing for all by 2030. The Special Rapporteur suggests that, as a way forward, States must redefine their relationship with private investors and international financial institutions, and reform the governance of financial markets so that, rather than treating housing as a commodity valued primarily as an asset for the accumulation of wealth they reclaim housing as a social good, and thus ensure the human right to a place to live in security and dignity.

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Contents

I. Introduction: the financialization of housing

1. The expanding role and unprecedented dominance of financial markets and corporations in the housing sector is now generally referred to as the “financialization of housing”.[1] The term has a number of meanings. In the present report, the “financialization of housing” refers to structural changes in housing and financial markets and global investment whereby housing is treated as a commodity, a means of accumulating wealth and often as security for financial instruments that are traded and sold on global markets. It refers to the way capital investment in housing increasingly disconnects housing from its social function of providing a place to live in security and dignity and hence undermines the realization of housing as a human right. It refers to the way housing and financial markets are oblivious to people and communities, and the role housing plays in their well-being.

2. Housing and real estate markets have been transformed by corporate finance, including banks, insurance and pension funds, hedge funds, private equity firms and other kinds of financial intermediaries with massive amounts of capital and excess liquidity. The global financial system has grown exponentially and now far outstrips the so-called real “productive” economy in terms of sheer volumes of wealth, with housing accounting for much of that growth.

3. Housing and commercial real estate have become the “commodity of choice” for corporate finance and the pace at which financial corporations and funds are taking over housing and real estate in many cities is staggering. The value of global real estate is about US$ 217 trillion, nearly 60 per cent of the value of all global assets, with residential real estate comprising 75 per cent of the total.[2] In the course of one year, from mid-2013 to mid-2014, corporate buying of larger properties in the top 100 recipient global cities rose from US$ 600 billion to US$ 1 trillion.[3] Housing is at the centre of an historic structural transformation in global investment and the economies of the industrialized world with profound consequences for those in need of adequate housing.

4. In “hedge cities”, prime destinations for global capital seeking safe havens for investments, housing prices have increased to levels that most residents cannot afford, creating huge increases in wealth for property owners in prime locations while excluding moderate- and low-income households from access to homeownership or rentals due to unaffordability. Those households are pushed to peri-urban areas with scant employment and services.

5. Elsewhere, financialization is linked to expanded credit and debt taken on by individual households made vulnerable to predatory lending practices and the volatility of markets, the result of which is unprecedented housing precarity. Financialized housing markets have caused displacement and evictions at an unparalleled scale: in the United States of America over the course of 5 years, over 13 million foreclosures resulted in more

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[1] See Manuel Aalbers, *The Financialization of Housing: A political economy approach* (London and New York, Routledge, 2016), and Radhika Balakrishnan, James Heintz and Diane Elson**,** *Rethinking Economic Policy for Social Justice: The radical potential of human rights* (London and New York, Routledge, 2016), p. 85.

[2] Savills World Research, “Around the world in dollars and cents: what price the world? Trends in international real estate trading”, 2016, pp. 4-5. Available from www.savills.co.uk/research_articles/188297/198669-0.

[3] Saskia Sassen, “The global city: enabling economic intermediation and bearing its costs”, *City & Community*, vol. 15, No. 2 (June 2016), p. 105.

than 9 million households being evicted.[4] In Spain, more than half a million foreclosures between 2008 and 2013 resulted in over 300,000 evictions.[5] There were almost 1 million foreclosures between 2009 and 2012 in Hungary.[6]

6. In many countries in the global South, where the majority of households are unlikely to have access to formal credit, the impact of financialization is experienced differently, but with a common theme — the subversion of housing and land as social goods in favour of their value as commodities for the accumulation of wealth, resulting in widespread evictions and displacement. Informal settlements are frequently replaced by luxury residential and high-end commercial real estate.[7]

7. While much has been written about the financialization of housing, it has not often been considered from the standpoint of human rights. Decision-making and assessment of policies relating to housing and finance are devoid of reference to housing as a human right. Issues related to business and human rights have received some attention in recent years. However, the housing and real estate sector — the largest business sector with many of the most serious impacts on human rights — appears to have been mostly ignored.

8. A report on the topic is timely as States embark on the implementation of the Sustainable Development Goals. If the commitment in target 11.1 to ensure access for all to adequate, safe and affordable housing and basic services is to be achieved by 2030, it is essential to consider the role of international finance and financial actors in housing systems. That will help to identify and address more effectively patterns of systemic exclusion, to ensure more meaningful human rights accountability for issues of displacement, evictions, demolitions and homelessness, and the engagement of all relevant actors in the realization of the right to adequate housing.

9. Constructing human rights accountability within a complex financial system to which Governments are themselves accountable, involving trillions of dollars in assets, may seem a daunting task. However, the global community cannot afford to be cowered by the complexity of financialization.[8] The present report aims to cut through some of the complexity and opaqueness of finance in housing to expose the central relevance and necessity of the human rights paradigm at multiple levels, from the international to the local.

10. The report builds on important work undertaken by the previous Special Rapporteur on the right to housing. In her 2012 report on the impact of finance policies on the right to housing of those living in poverty (A/67/286), she warned of emerging trends towards the financialization of housing encouraged by States' abandonment of social housing programmes and increased reliance on private market solutions. She documented attempts by States to rely on the private market and homeownership, which increases inequality and fails to address the housing needs of low-income and marginalized groups. More fundamentally, she called for a paradigm shift through which housing would once again be

[4] Saskia Sassen, "Finance as capability: good, bad, dangerous", 2014, pp. 5-6. Available from http://arcade.stanford.edu/occasion/finance-capability-good-bad-dangerous.

[5] Observatory of Economic, Social and Cultural Rights and Platform of Mortgage Victims, "Housing emergency in Spain: the crisis of foreclosures and evictions from a human rights perspective" (December 2013), p. 12. Available from http://observatoridesc.org/sites/default/files/2013-housing-emergency-spain-observatory-desc.pdf.

[6] Saskia Sassen, *Expulsions: Brutality and Complexity in the Global Economy* (Cambridge, Massachusetts and London, Harvard University Press, 2014), p. 48.

[7] Stanley D. Brunn, Maureen Hays-Mitchell and Donald J. Zeigler, eds., *Cities of the world: world regional urban development*, 5th ed. (Plymouth, Rowman & Littlefield Education, 2012), p. 446.

[8] See Saskia Sassen, *Expulsions: Brutality and Complexity in the Global Economy* (Cambridge, Massachusetts and London, Harvard University Press, 2014).

recognized as a fundamental human right rather than as a commodity. The present report takes up that challenge.

II. Human rights framework

11. The right to adequate housing is, at its core, the right to a place to live in dignity and security. It is interdependent with other human rights, particularly the right to equality and non-discrimination and the right to life (see A/71/310). It is against those core human rights values that the actions of States in relation to financial actors and housing systems are to be assessed.

12. International and domestic financial institutions and markets are created and sustained by Governments and must be made accountable to States' human rights obligations. Millions of foreclosures, evictions and displacements and more than a billion people living in grossly inadequate housing conditions and homelessness worldwide signal, among other things, the failure of States and of the international community to manage the interaction between financial actors and housing systems in accordance with the right to adequate housing. The absence of any effective human rights monitoring or accountability in that sphere also signals the underestimation on the part of Governments, international and national human rights bodies, domestic courts, lawyers and advocates of the role that domestic, regional and international human rights law could play as a framework for both regulating financial actors and engaging financial systems in the realization of the right to housing.

13. States' human rights obligations are commonly categorized on the basis of a tripartite division of obligations to respect, protect and fulfil human rights. A State must respect the right to housing by refraining from taking any action that would violate that right, protect individuals and communities from violations of the right to housing by third parties and fulfil the right to adequate housing to the maximum of its available resources, with a view to achieving progressively its full realization by all appropriate means, including particularly the adoption of legislative measures.[9] The obligation to fulfil the right to housing includes adopting and implementing, in collaboration with stakeholders, strategies for the realization of the right to housing that clarify the responsibilities and roles of all levels of government, institutions and private actors, with goals, timelines, accountability mechanisms, appropriate budgetary allocations and measures to ensure access to justice.[10]

14. The tripartite obligations of States in relation to the management of financial markets and the regulation of private actors are often interpreted too narrowly. Under international human rights law, States' obligations in relation to private investment in housing and the governance of financial markets extend well beyond a traditional understanding of the duty to simply prevent private actors from actively violating rights. The assumption, bolstered by neo-liberalism, that States should simply allow markets to work according to their own rules, subject only to the requirement that private actors "do no harm" and do not violate the rights of others, is simply not in accordance with the important obligation to fulfil the right to adequate housing by all appropriate means, including legislative measures.

15. The State must regulate, direct and engage with private market and financial actors, not simply to ensure that they do not explicitly violate rights, but also to ensure that the

[9] See International Covenant on Economic, Social and Cultural Rights, art. 2 (1).

[10] See Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing, paras. 11-15.

rules under which they operate and their actions are consistent with the realization of the right to adequate housing. States are obliged under international human rights to ensure that private investors respond to the needs of residents for secure, affordable housing and do not cater only to the wealthy or purchase homes simply to leave them empty.

16. State compliance with the right to adequate housing must ultimately be assessed in relation to the circumstances of rights-holders. A human rights framework for addressing the financialization of housing must challenge the way in which accountability to the needs of communities and the human rights obligations of Governments has been replaced with accountability to markets and investors. Mechanisms must be established for rights-holders to be fully heard and engaged in decisions that affect them. States must ensure that financial institutions and investors are responsive to the needs of marginalized communities, behave in a manner that is consistent with the full realization of the right to adequate housing and provide complaints procedures and access to effective remedies.[11]

17. The Committee on Economic, Social and Cultural Rights has suggested that the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide.[12] In the context of the critical relationship between housing and financial markets, the articulation of a State's fulfilment obligation to not only provide housing when needed but also to facilitate the implementation of the right to housing is helpful in capturing the wide range of States' obligations to ensure that financial markets and the actions of private investors work towards the realization of the right to adequate housing.

18. In addition to the more obvious requirements, within the framework of human rights, to ensure that housing developers exercise due diligence, comply with safety standards and adopt policies of non-discrimination, for example, States may also be required to ensure that investment in housing complies with a rights-based housing strategy and with the target of ensuring adequate housing for all by 2030. Private actors may be required to take particular steps to ensure access to credit for disadvantaged households and to address the needs of residents of informal settlements, women, migrants and people with disabilities. The obligation of States to facilitate the realization of the right to housing by establishing a coherent strategy at both the national and international levels with clearly allocated roles and responsibilities is central to the commitments made by States in the 2030 Agenda for Sustainable Development and the New Urban Agenda.

III. Human rights implications of the financialization of housing

A. Historical origins of the financialization of housing

19. The financialization of housing has its origins in neo-liberalism, the deregulation of housing markets, and structural adjustment programmes imposed by financial institutions and agreed to by States. It is also tied to the internationalization of trade and investment agreements which, as discussed below, make States' housing policies accountable to investors rather than to human rights. The financialization of housing is also the result of significant changes in the way credit was provided for housing and more specifically, of the advent of "mortgage-backed securities".

[11] See Committee on Economic, Social and Cultural Rights, communication No. 2/2014, *I.D.G. v. Spain*, Views adopted on 17 June 2015, and general comment No. 9 (1998) on the domestic application of the Covenant. See also Balakrishnan, Heintz and Elson**,** *Rethinking Economic Policy for Social Justice,* pp. 96-97.

[12] See Committee on Economic, Social and Cultural Rights, general comments No. 12 (1999) on the right to adequate food, para. 15, and No. 13 (1999) on the right to education, para. 46.

20. Prior to the advent of mortgage-backed securities in the 1980s, the provision of credit for a housing purchase was generally an individualized contractual relationship between a single lender, usually a bank or a savings and loan institution, and a single creditor or homeowner. Mortgage-backed securities were promoted as a means of attracting additional lenders into the mortgage market by reducing the reliance on local financial institutions. They allowed for portfolios of mortgages to be bundled together, in order to distribute the risk more evenly among all of the mortgages, and sold to investors in the form of bonds or investment instruments on secondary bond markets. That created new conditions for global capital to be invested in housing finance.[13]

21. The 2008 global financial crisis revealed the fragility, volatility and predatory nature of financialized housing markets and the potential for catastrophic outcomes both for individual households and for the global economy. In the United States of America, there were an average of 10,000 foreclosures per day in 2008, and as many as 35 million individuals were affected by evictions over a five-year period.[14] Not only had people lost their homes but they faced personal financial ruin.

22. Many expected that the global financial crisis and its impact on the human rights of millions of households would act as an alarm bell, forcing States and international financial institutions to reassess the value of unbridled financialization and introduce reforms to ensure that the financial system addressed rather than exploited the housing needs of low-income households. Unfortunately, it seemed to have the opposite effect. Individuals and families who were affected by the crisis were often blamed for taking on too much debt and new rules and regulations were put in place to restrict their access to mortgages. Austerity measures cut programmes on which they had relied for access to housing options, and the march towards the financialization of housing continued. The States that were the most severely affected by the crisis assumed responsibility for billions of dollars' worth of distressed debt (high-risk mortgages) and arranged for them to be sold off to private equity funds, thereby increasing rather than decreasing the role and power of corporate finance in national housing systems.[15]

23. States have continued to focus on attracting capital and wealthy investors with reduced taxes and other benefits. Countries like Cyprus, Greece, Portugal and Spain, where harsh austerity measures have been implemented, have enacted policies to entice foreign investors into their domestic markets.[16] One such measure, colloquially known as the "golden visa", allows foreign investors to receive permanent residence or even citizenship in exchange for a minimum amount of investment in property: €500,000 in Spain and Portugal, €300,000 in Cyprus and €250,000 in Greece.[17] Australia has a similar programme for individual foreign investors who purchase $A 5 million in real estate through a real estate investment trust to qualify for an Australian significant investor visa.[18] Programmes

[13] See Aalbers, *The Financialization of Housing*.

[14] Sassen, *Expulsions*, p. 128.

[15] Debt and Development Coalition Ireland, "From Puerto Rico to the Dublin docklands: vulture funds and debt in Ireland and the global South", 2014, pp. 4-9. Available from www.debtireland.org/download/pdf/ddci_vulture_funds_report.pdf.

[16] Xiangming Chen and Julia Mardeusz, "China and Europe: reconnecting across a new silk road", *European Financial Review*, vol. 2 (February 2015), p. 8.

[17] See, for example, Spain, Act No. 25/2015, art. 63; Greece, Act No. 4146/2013, art. 6 (2); and Portugal, Act No. 23/2007, amended by Act No. 29/2012. See also "Living, buying property and doing business in Cyprus", available at www.cyprusinformation.com/.

[18] See Australia, "Explanatory statement: select legislative instrument No. 102, 2015", attachment D (Subclass 188 (Business Innovation and Investment) visa). See also Dallas Rogers, Chyi Lin Lee and Ding Yan, "The politics of foreign investment in Australian housing: Chinese investors, translocal sales agents and local resistance", *Housing Studies*, vol. 30, No. 5 (2015).

of that nature can contribute to housing affordability problems for local residents without providing any evidence of substantial benefits for the broader population.

B. Effects of excess global capital

24. The amount of money involved in the purchase of housing and real estate is almost impossible to digest. Cushman and Wakefield, an American global real estate services firm engaging in $90 billion worth of real estate sales per year, publishes an annual report entitled “The Great Wall of Money” which includes a calculation of the amount of capital raised each year for trans-border real estate investments. The total in 2015 was a record $443 billion, with residential properties representing the largest single share. The report notes that “cross border flows will continue to transform real estate investment across the globe”.[19]

25. Housing and urban real estate have become the commodity of choice for corporate finance, a “safety deposit box” for the wealthy, a repository of capital and excess liquidity from emerging markets and a convenient place for shell companies to stash their money with very little transparency.[20] In addition, corporate tax havens that generate massive amounts of profit immune from taxation, estimated at 30 per cent of global gross domestic product, are particularly attracted to housing and real estate.[21] In most countries, residential investment provides many tax advantages, so that the housing system itself provides a tax haven for the rich (see A/67/286, pp. 11-12).

26. Housing prices in so-called “hedge cities” like Hong Kong, London, Munich, Stockholm, Sydney and Vancouver have all increased by over 50 per cent since 2011, creating vast amounts of increased assets for the wealthy while making housing unaffordable for most households not already invested in the market.[22] Land prices in the 35 largest cities in China have increased almost five-fold in the past decade and prices for urban land in the top 100 cities in China have increased on average by 50 per cent in the past year.[23]

27. Corporate finance does not only profit from inflated prices in hedge cities, it also profits from housing crises.[24] The global financial crisis created unprecedented opportunities for buying distressed housing and real estate debt, which was sold off at fire sale prices in countries such as Ireland, Spain, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The Blackstone Group, the world’s largest real estate private equity firm, managing $102 billion worth of property, spent $10 billion to purchase repossessed properties in the United States of America at courthouses and in online auctions following the 2008 financial crisis, emerging as the largest rental

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19 Cushman and Wakefield, “The Great Wall of Money”, 2016, p. 5. Available from www.cushmanwakefield.com/en/research-and-insight/2016/great-wall-of-money-2016/.

20 See Rodrigo Fernandez, Annelore Hofman and Manuel Aalbers, “London and New York as a safe deposit box for the transnational wealth elite” *Environment and Planning A*, vol. 48, No. 12 (December 2016).

21 Aalbers, *The Financialization of Housing*, p. 85.

22 See Sassen, “The global city”.

23 Edward Gleasan and others, “A real estate boom with Chinese characteristics”, National Bureau of Economic Research, Working Paper 22789 (2016), p. 2. Available from www.nber.org/papers/w22789.pdf. See also Jacky Wong, “Why China’s developers can’t stop overpaying for property”, *Wall Street Journal*, 24 June 2016.

24 Elvin Wyly and others, “Cartographies of race and class: mapping the class-monopoly rents of American subprime mortgage capital”, *International Journal of Urban and Regional Research*, vol. 33, No. 2 (June 2009), p. 333.

landlord in the country.[25] Other major institutional players invested $20 billion to purchase approximately 200,000 single-family homes in the United States between 2012 and mid-2013.[26] With the recovery of the United States housing market, Blackstone and other private equity firms have sought to take advantage of other buying opportunities in Europe and Asia. Cushman and Wakefield estimated that there was over €541 billion of distressed real estate debt in Europe in 2015, much of it held by public asset management companies such as the National Asset Management Agency in Ireland and the Sociedad de Gestión de Activos Procedentes de la Reestructuración Bancaria (company for the management of assets proceeding from the restructuring of the banking system) in Spain. The vast majority of that debt is being purchased by giant private equity firms.[27]

28. Massive investment of capital into housing markets and rising prices should not be confused with the production of housing and the benefits that accrue from it. The bulk of real estate transactions of that sort do not create needed housing or long-term secure employment. When rented homes or mortgages are owned by remote investors, money mostly flows out of communities and simply creates greater global concentration of wealth. The new corporate interest in developing rental properties from homes sold in foreclosures has also raised concerns that there is a greater incentive to pursue foreclosures rather than modify a loan agreement to avoid an unnecessary eviction.[28] The proliferation of foreign and domestic investment in short-term rental properties, such as for Airbnb, in countries like Portugal, has contributed to escalating prices of housing and changes to the make-up of neighbourhoods, without creating affordable housing or other benefits for the local population.

29. What is so stark about the pouring of those vast amounts of money into housing is that hardly any of it is directed towards ameliorating the insufferable housing conditions in which millions live. If even a portion of those amounts was directed towards affordable housing and access to credit for people in need of it, target 11.1 of the Sustainable Development Goals, to ensure adequate housing for all by 2030, would be well within reach.[29] Financialization under current regimes, however, creates the opposite effect: unaccountable markets that do not respond to housing need, and urban centres that become the sole preserve of those with wealth.

C. Dehumanized housing: from social use to commodity value

30. A significant portion of investor-owned homes are simply left empty. In Melbourne, Australia, for example, 82,000 or one fifth of investor-owned units lie empty.[30] In the

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[25] Joe Beswick and others, “Speculating on London’s housing future: the rise of global corporate landlords in ‘post-crisis’ urban landscapes”, *City*, vol. 20, No. 2 (March 2016), pp. 323-325.

[26] Right to the City Alliance, “Renting from Wall Street: Blackstone’s invitation homes in Los Angeles and Riverside”, July 2014, p. 9. Available from http://homesforall.org/wp-content/uploads/2014/07/LA-Riverside-Blackstone-Report-071514.pdf.

[27] Debt and Development Coalition Ireland, “From Puerto Rico to the Dublin docklands”, p. 9.

[28] See Sarah Edelman, Julia Gordon and David Sanchez, “When Wall Street buys Main Street: the implications of single-family rental bonds for tenants and housing markets” (Washington, D.C, Centre for American Progress, 2014). Available from www.americanprogress.org/wp-content/uploads/2014/02/WallStMainSt_Report.pdf.

[29] Jonathan Woetzel and others, “Tackling the world’s affordable housing challenge” (McKinsey Global Institute Report, October 2014), p. 8. Available from www.mckinsey.com/global-themes/urbanization/tackling-the-worlds-affordable-housing-challenge.

[30] Catherine Cashmore, “Speculative vacancies 8: the empty properties ignored by statistics” (Prosper Australia, 2015), p. 5. Available from www.prosper.org.au/wp-content/uploads/2015/12/11Final_Speculative-Vacancies-2015-1.pdf.

affluent boroughs of Chelsea and Kensington in the city of London, prime locations for wealthy foreign investors, the number of vacant units increased by 40 per cent between 2013 and 2014.[31] In such markets, the value of housing is no longer based on its social use. The housing is as valuable whether it is vacant or occupied, lived in or devoid of life. Homes sit empty while homeless populations burgeon.

31. Financialized housing markets respond to preferences of global investors rather than to the needs of communities. The average income of households in the community or the kinds of housing they would like to inhabit is of little concern to financial investors, who cater to the needs or desires of speculative markets and are likely to replace affordable housing that is needed with luxury housing that sits vacant because that is how best to turn a profit quickly. Financialized housing thus precipitates what has been referred to as "residential alienation", the loss of the critical relationship to housing as a dwelling and the diverse set of social relationships that give it meaning.[32] In financialized housing markets, those making decisions about housing — its use, its cost, where it will be built or whether it will be demolished — do so from remote board rooms with no engagement with or accountability to the communities in which their "assets" are located.[33]

32. Many corporate owners of housing are nameless. In the first fiscal quarter of 2015, 58 per cent of all property purchases over $3 million in the United States were made by limited liability companies rather than named people, and the majority of those purchases were in cash, creating a greater level of anonymity.[34] More than 36,000 properties in London are held by shell companies registered in offshore havens such as Bermuda, the British Virgin Islands, the Isle of Man and Jersey.[35]

33. Many residential rental properties are now owned by bondholders or holders of public stock with no direct connection to properties. It is difficult to know who is accountable for human rights when the owner of housing is a multibillion dollar fund, bondholders, public stockholders or a nameless corporate shell. Tenants living in housing owned by absentee corporate landlords have complained of sharp increases in rent, inadequate maintenance and conditions as a result of substandard renovations that have been undertaken quickly to flip the home into rentals, and an inability to hold anyone accountable for those conditions.

[31] See Department for Communities and Local Government, "Vacant dwellings". Available from https://data.london.gov.uk/dataset/vacant-dwellings/resource/c428a18b-9961-4b98-9cfe-b7f120114141. See also Ed Cumming, "'It's like a ghost town': lights go out as foreign owners desert London homes", *Guardian*, 25 January 2015, and "Empty Homes in England — data". Available from https://docs.google.com/spreadsheets/d/1IgLJr3bfF_63Hv1w17AkhwqwsPehC6N8q8eriVLuWs8/edit#gid=0.

[32] See David Madden and Peter Marcuse, *In Defense of Housing: The Politics of Crisis* (London and New York, Verso, 2016), chap. 2.

[33] Ibid., p. 19.

[34] See Ana Swanson, "How secretive shell companies shape the U.S. real estate market", *Washington Post*, 12 April 2016, and Louise Story and Stephanie Saul, "Stream of foreign wealth flows to elite New York real estate", *New York Times*, 7 February 2015.

[35] See Transparency International UK, *Corruption on your doorstep: how corrupt capital is used to buy property in the UK* (2015). Available from www.transparency.org.uk/publications/corruption-on-your-doorstep/.

D. Creating inequality and exclusion

34. Increased prices of housing and real estate assets have become key drivers in the creation of greater wealth inequality. Those who own property in prime urban locations have become richer, while lower-income households confronting the escalating costs of housing become poorer. Surveys of ultra-high-net-worth individuals show that more than half have increased the proportion of their investments allocated to residential properties, with the most common reasons being in order to sell at a later date and to provide a safe haven for wealth.[36] The "economics of inequality",[37] in fact, may be explained in large part by the inequalities of wealth generated by housing and real estate investments.[38] Buying a home with a mortgage becomes a speculative investment depending on volatile financial markets, which may generate considerable wealth on leveraged equity or, alternatively, deprive households of a lifetime of savings.

35. The dominant impact of wealth and private investment has also created and perpetuated spatial segregation and inequality in cities. In South Africa, for example, the impact of private investment in the urban core of cities has sustained the discriminatory patterns of the apartheid area, with wealthier, predominantly white households occupying areas close to the centre and poorer black South Africans living on the peripheries of cities. That "spatial mismatch", relegating poor black households to homeownership in peri-urban areas where employment opportunities are scarce, rather than rentals in the urban core, for example, has entrenched their poverty and cemented inequality.[39] Similar patterns of racial displacement from urban centres and segregation in evidence in large cities in the United States have led to more severe impacts of financialization and the mortgage crisis being experienced by African-American households.[40] Financialization also creates gender segregation. In Australia, analysis has shown that average-income single female workers can afford to live in only one suburb of Melbourne and cannot afford to live anywhere in Sydney.[41]

36. In contemporary Chile, the appropriation of land by large scale investors and speculators, accumulating land and luxury properties, has meant that inner-city redevelopment has displaced many traditional residents, exemplifying "the intertwined roles of the state and assorted holders of economic capital in the production, distribution and representation of urban exclusion and segregation".[42]

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[36] Knight Frank Research, "The Wealth Report 2016: the global perspective on prime property and investment", p. 13. Available from http://content.knightfrank.com/research/83/documents/en/wealth-report-2016-3579.pdf.

[37] See Thomas Piketty, *The Economics of Inequality* (Cambridge, Massachusetts and London, Harvard University Press, 2015).

[38] See Matthew Rognlie, "Deciphering the fall and rise in the net capital share: accumulation or scarcity?" *Brookings Papers on Economic Activity* (Spring 2015), and Aalbers, *The Financialization of Housing*, p. 83.

[39] See Socio-Economic Rights Institute of South Africa, "Edged out: spatial mismatch and spatial justice in South Africa's main urban areas", November 2016. Available from www.seri-sa.org/images/images/SERI_Edged_out_report_Final_high_res.pdf.

[40] See Jacob Rugh and Douglas Massey, "Racial segregation and the American foreclosure crisis", *American Sociological Review*, vol. 75, No. 5 (October 2010).

[41] See Council to Homeless Persons, "Single working women being locked out of renting in Melbourne", 2 October 2016. Available from http://chp.org.au/wp-content/uploads/2016/10/161002_single-women-locked-out-of-rental.pdf. See also Calla Wahlquist, "Apartment rent in Sydney and Melbourne beyond reach of many women", *Guardian*, 3 October 2016.

[42] Ernesto López-Morales, "Gentrification in the global South", *City*, vol. 19, No. 4 (2015), p. 569.

37. Financialized housing markets create and thrive on gentrification and the appropriation of public value for private wealth. Improved services, schools or parks in an impoverished neighbourhood attract investment, which then drives residents out. The transformation of an old railway line in West Chelsea in Manhattan into a public walkway and park has attracted wealthy investors to a mixed income neighbourhood, radically transforming it with luxury housing units costing in the multimillions, and displacing longer term residents.[43] In Vancouver, the opening of new public transport facilities in Burnaby, one of the few remaining areas of affordable rental housing, has quickly led to the development of expensive condominium towers, displacing residents who have not only lived there for decades, but also invested in developing their community.

38. Patterns of inequality are often starkest in developing countries. In Africa, if current trends continue, the number of households living in informal settlements will continue to increase while the number of ultra-high-net-worth individuals is predicted to rise by almost 50 per cent in the next decade.[44]

E. Relinquished governance and accountability

39. The financialization of housing has dramatically altered the relationship of States to the housing sector and to those to whom they have human rights obligations. Rather than being held accountable to residents and their need for housing, States' housing policies have often become accountable to financial institutions and seem to pander to the confidence of global credit markets and the preferences of wealthy private investors. Given the predominance of housing-related credit in many economies, domestic housing policy becomes intertwined with the priorities and strategies of central banks and international financial institutions, which are themselves rarely held accountable to States' human rights obligations to ensure access to adequate housing and do not meaningfully engage with rights-holders.[45]

40. Accountability to global finance rather than to human rights has been rigorously imposed by the International Monetary Fund and other creditors when Governments have faced foreign debt crises. Decisions made by central banks and finance ministers in consultation with international financial institutions are rarely informed by input from stakeholders or those involved with housing policy and programmes. Processes put in place to address the debt crisis in Central, Eastern and South-Eastern Europe through the "Vienna Initiative" for example, brought together "key stakeholders", identified as national central banks and Western European parent banks along with multiple regional and international financial institutions. Absent were civil society groups and anyone representing the interests of borrowing households, the people most affected by any decisions taken.[46]

41. In circumstances where Governments should be relying on positive measures and resource allocation to provide housing to households affected by economic downturns and widespread unemployment, many have been held accountable to austerity measures imposed by creditors. They have agreed to dramatically reduce or eliminate housing programmes, privatize social housing and sell off massive amounts of housing and real estate assets to private equity funds.

43 Kevin Loughran, "Parks for profit: the High Line, growth machines, and the uneven development of urban public spaces", *City & Community*, vol. 13, No. 1 (March 2014), pp. 49-68.

44 Knight Frank Research, "The Wealth Report 2016", p. 13.

45 Ray Forrest, "Globalization and the housing asset rich", *Global Social Policy*, vol. 8, No. 2 (2008), p. 168.

46 See Daniela Gabor, *Central Banking and Financialization: A Romanian Account of how Eastern Europe became Subprime* (New York, Palgrave Macmillan, 2011).

42. As noted by the Institute for Human Rights and Business, global financial institutions with representations from central bank governors and ministers of finance, "seem generally remote from stakeholder engagement. These institutions are independent self-governing bodies with their own rules of procedure and are not directly accountable to the public."[47] Governments relying on the financial system and financialized housing assets to service their own debt are not encouraged by global financial institutions to manage housing systems for compliance with human rights. They are more likely to be urged to cut housing programmes and social protection programmes to comply with the demands and economic theories of financial corporations and credit agencies.

IV. Financialization of housing in developing and emerging economies

43. Research into the financialization of housing has focused on Australia, Europe and North America, where access to credit extends to a large portion of the population and where the majority of the "global cities" attracting capital in unprecedented quantity are located. Caution is needed, therefore, when examining the diverse experiences of financialization, in order to avoid generalizations about global patterns based on the particular circumstances in those cities.

44. The housing sector in the global South has not been subject to extensive financing of homeownership. Only about 17 per cent of the population in Botswana, Kenya, Namibia and Zambia, for example, would be eligible for mortgage finance based on existing criteria.[48] Low-income, informal and indigenous communities have nevertheless experienced, first-hand, the power of financial corporations to appropriate land and real estate and to generate vast disparities in wealth by treating housing and land as commodities. The displacement of Garifuna communities by model cities containing luxury developments for tourists and wealthy residents in Honduras is an example of the kinds of displacements of communities and forced evictions that are occurring in many countries (see A/HRC/33/42/Add.2, para. 56). Many local and national governments looking for capital investment have opted to sell land to major developers at the expense of indigenous and impoverished communities and those living in precarious housing.

45. Informal settlements in Southern cities are regularly demolished for luxury housing and commercial development such as shopping malls and other high-end services intended for those with expendable incomes. In Lagos, Nigeria, for example, 30,000 residents of the Otodo Gbame community were forcibly removed after their waterfront homes were set alight, allegedly related to luxury developments. Many were left homeless.[49] Elsewhere, when informal settlements are upgraded with infrastructure development and the granting of formal title and credit, they become subject to speculation and rising costs that force existing residents, particularly informal renters, out of the community. The real estate market in Mumbai, India, is now actively engaged in promoting speculative investment in

[47] See Institute for Human Rights and Business, "Human rights and sustainable finance: exploring the relationship", 11 February 2016. Available from www.ihrb.org/focus-areas/finance/report-human-rights-and-sustainable-finance-exploring-the-relationship.

[48] See Centre for Affordable Housing Finance in Africa, "Housing Microfinance". Available from www.housingfinanceafrica.org/projects/housing-microfinance.

[49] Information on the relevant communication is to be made public in the joint communications report for the thirty-fourth session of the Human Rights Council.

informal settlements, where upgraded housing is attracting real estate speculation and price increases.[50]

46. Experiences of financialization in emerging economies demonstrate many commonalities with experiences in global cities.[51] In Malaysia, for example, the national mortgage corporation, Cagamas, originally established to promote access to affordable housing as a social policy, has been transformed into the single largest issuer of asset-backed securities in Malaysia, with more than 50 per cent of the market share, and with the goal to establish itself as a "leading securitization house in the region". It has been at the centre of a significant expansion of homeownership modelled on the United States institutions, Fannie Mae and Freddie Mac.[52]

47. The Republic of Korea experienced a fairly rapid transition to a financialized economy after the Asian financial crisis, when the International Monetary Fund bailout of Korean banks was made conditional on a restructuring programme of deregulation and privatization. While expanded access to mortgages has increased the rate of homeownership, the Republic of Korea now experiences greater inequality between rich and poor and has the highest level of household debt for any emerging country.[53]

48. In Egypt, after Prime Ministerial Decree No. 350/2007 removed restrictions on foreign purchases of property, land prices more than doubled in many areas, rising at a rate of 148 per cent per year between 2007 and 2011.[54] Extension of credit for housing has been largely restricted to higher income households in Cairo and Giza, and approximately 3 million homes have been left empty or unfinished by their owners in urban areas. Poverty continues to increase and more than 12 million people live in informal housing.[55]

49. In Mexico, mortgage securitization and other aspects of financialization have been adopted, beginning in 2003, with the active involvement of the World Bank. The housing market experienced a boom with increased mortgage lending and a tripling of the amount of residential mortgage-backed securities to over US$ 6 billion in 2006. However, the benefits of the housing boom and securitized mortgages have not extended to the households that are most in need. Measures taken by the Government to stabilize the financial sector proved attractive to financial corporations, pension funds and private equity firms, which have become more significant actors in the Mexican housing market.[56]

50. In many developing and emerging economies, the World Bank and other international and regional financial institutions continue to actively promote the financialization of housing as the dominant strategy for addressing the critical need for housing, despite evidence that such strategies fail to provide housing options to the

[50] See Vandana Desai and Alex Loftus, "Speculating on slums: infrastructure fixes in informal housing in the global South", *Antipode*, vol. 45, No. 4 (2012).

[51] Bruno Bonizzi, "Financialization in developing and emerging countries: a survey", *International Journal of Political Economy*, vol. 42, No. 4 (2014), p. 91.

[52] Ibid., p. 93.

[53] See Kyung-Hwan Kim and Miseon Park, "Housing policy in the Republic of Korea", Asian Development Bank Institute Working Paper, No. 570 (April 2016). Available from www.adb.org/sites/default/files/publication/183281/adbi-wp570.pdf.

[54] See Yahia Shawkat, "Egypt's deregulated property market: a crisis of affordability", Middle East Institute, 5 May 2015. Available from www.mei.edu/content/at/egypts-deregulated-property-market-crisis-affordability.

[55] See World Bank, "Opening up housing to Egypt's poorest", 5 May 2015. Available from www.worldbank.org/en/news/feature/2015/05/04/opening-up-housing-to-egypt-s-poorest.

[56] Susanne Soederberg, "Subprime housing goes south: constructing securitized mortgages for the poor in Mexico", *Anitpode*, vol. 47, No. 2 (March 2015), pp. 495-96.

households that are most in need, and lead to greater socioeconomic inequality.[57] World Bank development programmes concentrate on what they consider to be the building blocks of housing finance such as title registration, foreclosure procedures, lending regulations, long-term funding instruments, and improving the liquidity of mortgage assets in order to reduce the costs of credit-risk underwriting for investors.[58] Those policies, combined in many cases with austerity measures that reduce social protection and housing programmes, have meant that development programmes frequently support the emergence of a financialized housing system that may be at odds with States' obligations to prioritize the needs of those in the most desperate circumstances.[59]

V. Lack of access to justice, effective remedies and accountability

51. Financialization is made possible through the legal enforcement of agreements between lenders and borrowers. It relies on legal systems governing property rights, zoning laws and contracts and also on an increasingly complex system of international and regional treaties governing the terms and conditions of investments and government actions that may have an impact on profitability.

52. The excessive financialization of housing is directly related to systemic patterns of inequality in investment treaties and in domestic law that fail to recognize the paramountcy of human rights over investor interests and deny access to justice for those whose right to housing is at stake. Ensuring meaningful accountability of financial institutions and private actors to the right to housing will require a significant transformation of current systems of law and accountability and new avenues of access to justice at the local, national and international levels.

A. Investment treaties

53. There are currently almost 2,500 bilateral investment treaties in force and almost 300 treaties with investment provisions.[60] Provisions in investment treaties generally provide protection for investors from actions by States without imposing obligations on them to uphold human rights. Investors are guaranteed fair and equitable treatment, protection from direct or indirect expropriation and other protections and have access to an investor-State dispute settlement procedure to seek damages for breaches of those provisions. The effect of those protections is that investment in housing and real estate for the purposes of speculation and the accumulation of wealth becomes a protected "right", while government measures to regulate investment to protect the right to housing may be the basis for claims against States by private investors for massive damage awards.

54. Claims have recently been brought against the Dominican Republic and Panama, for example, on the basis that government decisions to cancel planned luxury developments in

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[57] International Bank for Reconstruction and Development and World Bank Group, "World Bank Group support for housing finance" (Washington, D.C, 2016), pp. 22-29. Available from https://ieg.worldbankgroup.org/Data/reports/housingfinance.pdf.

[58] Loïc Chiquier and Michael Lea, eds., *Housing Finance Policy in Emerging Markets* (Washington, D.C., The International Bank for Reconstruction and Development/The World Bank, 2009), p. xliv.

[59] See Padraic Kenna, ed., *Contemporary Housing Issues in a Globalized World* (Farnham, Ashgate Publishing, 2014).

[60] See the International Investments Agreements Navigator. Available from http://investmentpolicyhub.unctad.org/IIA.

order to protect indigenous territories or environmental resources violated investors' rights under bilateral investment treaties.[61] The Government of Mauritius is currently being taken to arbitration by a group of property development companies from the United Kingdom that invested in luxury real estate developments in Mauritius and are now seeking damages for a decision on the part of the Government to change its planning policy to restrict such developments.[62]

55. The mere threat of those kinds of claims can have a directive effect on State housing policy. Investment treaty arbitration frequently involves millions of dollars in damages, and thus acts as a disincentive for States to enact and enforce any regulatory measures restricting the profitability of housing or real estate assets purchased by foreign investors. Those whose right to adequate housing may have been infringed by States' failures to regulate the activities and speculative profits of foreign investors, on the other hand, have few if any avenues of redress, and certainly no ability to seek damages in the amounts claimed by private investors. The imbalance in access to remedies creates an imbalance in State accountability and priorities.

B. Domestic courts

56. Domestic adjudication in the area of housing and finance has also tended to protect investors and has been oriented towards enforcing the contractual relationship between lenders and creditors, both with individual households and with States, without considering imbalances in power or the implications for human rights of the means used for enforcing repayment.[63] The right to adequate housing has rarely been referenced in the adjudication of foreclosures and subsequent evictions, although it is clearly at issue.

57. In some instances, courts have played an important role in holding financial institutions liable for predatory and discriminatory lending practices, albeit without reference to international human rights obligations. In a recent case, the Eleventh Circuit Court of Appeals in the United States ruled in favour of a lawsuit brought by the city of Miami against Bank of America and Wells Fargo for discriminatory predatory lending practices linked to the mortgage crisis.[64] The Constitutional Court of South Africa recently considered a case involving a fraudulent scheme by investors and a finance company leading to hundreds of homeowners suffering losses of homes and savings. The Court rejected a claim by banks that would place responsibility on the homeowner for repayment of an unpaid debt due to the bank, holding that there is an obligation on the part of well-resourced powerful banking groups to check on the legality of what their clients are buying before lending money and earning interest on it.[65]

58. There is considerable variation and inconsistency, however, in the way mortgage or rental default is addressed in domestic law and enforced by courts. In many jurisdictions,

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[61] See *Michael Ballantine and Lisa Ballantine v. Dominican Republic*, Notice of arbitration and statement of claim, 11 September 2014, and *Álvarez and Marín Corporación S.A. and others v. Panama* (2015), International Centre for the Settlement of Investment Disputes (ICSID) case No. ARB/15/14.

[62] See *Thomas Gosling and others v. Republic of Mauritius* (2016), ICSID case No. ARB/16/32.

[63] See Lauren E. Willis, "Introduction: why didn't the courts stop the mortgage crisis?", *Loyola of Los Angeles Law Review*, vol. 43, No. 4 (January 2010), and Ada Colau and Adrià Alemany, *Mortgaged Lives: From the housing bubble to the right to housing* (Journal of Aesthetics & Protest Press, Los Angeles, Leipzig and Lon, 2014), pp. 165-167.

[64] See *City of Miami v. Bank of America Corp*, in The United States Court of Appeals for the Eleventh Circuit, case No. 14-14543.

[65] See *Absa Bank Limited v. Moore and Another* (CCT 03/16), Constitutional Court of South Africa.

foreclosure is a common practice for arrears in mortgage payments, regardless of the cause of the arrears and the consequences of foreclosure. Principles of international human rights law requiring, for example, that no eviction take place if it will lead to homelessness, have not generally been properly applied by domestic courts to evictions linked to defaults on mortgages or rent. The Special Rapporteur is concerned that in the area of housing, the "remedy" of eviction from homes is routinely applied in the case of unpaid debts, even though there are many other options available for courts to enforce repayment or restructuring of debts, short of invoking the State power to seize or evict individuals from their home, such as imposing repayment plans or garnishing wages. Foreclosures and evictions have severe effects on health and well-being and may result in the loss of custody of children.[66] Those are unacceptable consequences of default on mortgage or rent payments when other options are available. They are, moreover, generally contrary to international human rights law.

59. In some jurisdictions, foreclosures for mortgage default are not permitted and alternative procedures are limited by statute. Foreclosure was abolished in Ireland following the 2008 financial crisis, with an equivalent procedure to foreclosure provided, however, to the public asset management company, the National Asset Management Agency.[67] In Brazil, foreclosures are prohibited by law where residential properties are used by their owners for dwelling purposes, although creditors have developed ways of circumventing those restrictions.[68] In China, there are provisions for many other options for collecting outstanding debts, with foreclosure only being permitted when all other options have been exhausted.[69] In Spain, however, mortgage arrears are not considered to have been discharged by a foreclosure, which means indebted homeowners are required to continue to make payments on outstanding arrears even after having lost their home.[70]

60. In the first case to be considered by the Committee on Economic, Social and Cultural Rights under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, *I.D.G. v. Spain*, the Committee considered States' obligations to ensure access to justice in the context of mortgage foreclosure. As a result of a domestic court's lack of diligence, the author of the communication had not received notification of mortgage enforcement proceedings and received no other communication prior to an auction order. In those circumstances, the Committee found that the author's right to access to justice to protect the right to housing had been violated. The Committee found that "such notice in respect of a foreclosure application needs to be adequate, in accordance with the standards of the Covenant applicable to the right to housing".[71] The Committee clarified that Spain should ensure that no eviction takes place without due process guarantees, affirming that "the right to housing should be ensured to all persons irrespective of income or access to economic resources".[72]

61. In that case, the author was able to remain in her home and the Committee did not address the question of whether foreclosure and eviction from housing, potentially into

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66 Colau and Alemany, *Mortgaged Lives*, pp. 165-167.

67 See Ireland, Land and Conveyancing Law Reform Act 2009 and National Asset Management Agency Act 2009.

68 Bruno Martins, Eduardo Lundberg and Tony Takeda, "Housing finance in Brazil: institutional improvements and recent developments", Inter-American Development Bank Working Paper, No. 269 (2011), pp. 8-9. Available from www.iadb.org/document.cfm?pubDetail=1&id=36411946.

69 Tien Foo Sing, Yonglin Wang and Daxuan Zhao, "Impact of foreclosure laws on mortgage loan supply and performance", 10 September 2016. Available from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2837333.

70 Colau and Alemany, *Mortgaged Lives*, pp. 165-167.

71 See Committee on Economic, Social and Cultural Rights, *I.D.G. v. Spain*, para. 11.1.

72 See the Committee's general comment No. 4 (1992) on the right to adequate housing, para. 7.

homelessness, was a reasonable remedy in the case of mortgage or rent default or whether it was consistent with State obligations to respect the right to adequate housing. It is hoped that the issue will be subject to consideration and clarification by the Committee and other human rights bodies in future cases. In the Special Rapporteur's view, the all too common practice of depriving people of their homes as a remedy for outstanding mortgage or rental arrears should be subject to more rigorous human rights review than it has received to date from domestic courts and international human rights bodies.

C. Business and human rights

62. Emerging norms for business and human rights and increased attention to corporate social responsibility offer additional avenues through which to pursue enhanced accountability and effective remedies for violations of human rights linked to the financialization of housing.

63. A leading framework for the human rights responsibilities of business enterprises is the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. It is grounded in three pillars: (a) the obligation of States to protect against human rights abuses committed by companies; (b) the responsibility of business enterprises to respect human rights, and thus avoid causing or contributing to adverse human rights impacts; and (c) the obligation of States to provide victims with access to effective remedies when rights are breached. A similar framework is applied in the ten principles of the United Nations Global Compact, the first two of which commit businesses to support and respect the protection of internationally proclaimed human rights and to refrain from complicity in human rights abuses.[73] The Principles for Responsible Investment, launched in 2006 by the United Nations Environment Programme Finance Initiative and the Global Compact, provide a voluntary framework for the incorporation of environmental, social and governance issues into decision-making and ownership practices. Over 1,200 investment institutions have become signatories, with approximately US$ 45 trillion assets under management.[74]

64. Despite the growing attention to the importance of business and human rights and despite the fact that housing represents the largest global business sector, very little attention has been paid to the obligations of business enterprises and financial corporations operating in the real estate and housing sector with respect to the right to adequate housing. The "Practical guide to ESG integration for equity investing", for example, makes no reference to human rights in relation to investments in housing and other real estate. The International Organization of Securities Commissions, whose members regulate more than 95 per cent of the world's capital markets, has not addressed the central role that human rights in general and the right to housing in particular should play in the regulation of capital markets.[75]

65. Decisions made by global financial corporations, institutions and private equity firms regarding access to credit, foreclosures and development priorities have a direct impact on homelessness, displacement and access to affordable housing. The adoption of progressive policies with respect to corporate social responsibility by investors in housing

[73] See www.unglobalcompact.org/what-is-gc/mission/principles/principle-1.

[74] See www.unglobalcompact.org/take-action/action/responsible-investment.

[75] See Tajinder Singh, Deputy Secretary General of the International Organization of Securities Commission, "IOSCO initiatives and the challenges going forward", remarks to the Annual General Meeting and Conference of the International Council of Securities Associations, Stockholm, 23 May 2016. Available from www.iosco.org/library/speeches/pdf/20160523-Tajinder-Singh.pdf.

and real estate could play an important role in redirecting investment towards the social use of housing and advancing the implementation of the Sustainable Development Goals.

66. Business and human rights guidelines in the housing sector must recognize the responsibility of private investors and the obligations of regulators of capital markets to ensure that the needs of vulnerable and marginalized groups are adequately addressed through inclusive investment strategies and to contribute to the realization of the right to housing and the implementation of the 2030 Agenda and the New Urban Agenda.

VI. Policy responses to the financialization of housing

67. Policy responses to the financialization of housing have tended to prioritize support for financial institutions over responding to the needs of those whose right to adequate housing is at stake. Spending on bailouts of banks and financial institutions after the 2008 financial crisis far outstripped spending to provide assistance to the victims of the crisis. In fact, many national Governments made substantial cuts to their housing programmes. As noted above, the World Bank continues to promote "financial liberalization" rather than active State intervention in housing provision in emerging economies, despite the evidence that financialization generally increases inequality and fails to address the needs of the millions of households living in situations of homelessness or grossly inadequate informal housing.[76]

68. Nonetheless, a number of subnational and national governments have started to address the effects of excess capital flows and financialization on affordability and access to housing for low-income households. Initiatives have been advanced at both national and subnational levels providing a number of tools that can at least curb the excesses of financialization and mitigate its effects.

69. In response to the mortgage crisis in Spain, the autonomous regions of Andalusia and Catalonia introduced progressive laws explicitly affirming the social function of housing and facilitating temporary expropriation of vacant housing.[77] Catalonian legislation also prohibited foreclosures and evictions that would result in homelessness.[78] Both of those regional initiatives were struck down by the Constitutional Court as encroaching on the jurisdiction of the national Government and opposing the general economic interests of the country.[79] In response, at least in the case of Catalonia, the legislation was reintroduced with amendments and was passed by the Catalonian parliament.[80]

70. A number of States, including Austria, China, the Philippines, Thailand and Viet Nam, have instituted restrictions on foreign purchasers of residential real estate. The province of British Columbia in Canada has introduced a 15 per cent foreign homeowner

[76] See International Bank for Reconstruction and Development and World Bank Group, "World Bank Group support for housing finance". See also Aalbers, *The Financialization of Housing*, p. 73.

[77] See Aalbers, *The Financialization of Housing*, p. 73.

[78] See Autonomous Region of Catalonia, Spain, Ley 24/2015, de 29 de julio, de medidas urgentes para afrontar la emergencia en el ámbito de la vivienda y la pobreza energética, arts. 2, 3 and 4, and Regional Government of Andalusia, Decreto-Ley 6/2013, de 9 de abril, de medidas para asegurar el cumplimiento de la Función Social de la Vivienda.

[79] See www.boe.es/diario_boe/txt.php?id=BOE-A-2015-6831 (BOE-A-2015-6831, 19 June 2015), and www.boe.es/diario_boe/txt.php?id=BOE-A-2016-5337, (BOE-A-2016-5337, 3 June 2016).

[80] See Clara Blanchar, "Cataluña recupera la ley contra los desahucios que anuló el Constitucional", *El País*, 22 December 2016.

tax.[81] The City of Vancouver recently approved a 1 per cent tax, which would apply to both foreign and domestic investors, on vacant homes in order to address the issue of approximately 20,000 vacant homes in its overheated speculative housing market. Net revenue from those taxes is to be invested in affordable housing initiatives.[82]

71. Elsewhere, taxes on luxury properties have been instituted. Singapore imposes an 18 per cent property sales tax[83] and an additional buyer stamp duty on wealthy property owners and investors, with revenues used to subsidize homeownership of low-income individuals.[84] A number of jurisdictions, including China, Germany and Malaysia, have introduced a property speculation tax.[85] Tax in China, announced in early 2013 after renewed speculative activity in the housing market, involves a straight 20 per cent on capital gains,[86] and in Taiwan Province of China, residential property owners are taxed 15 per cent on the sale price of their property if they sell it within one year of purchase and 10 per cent if sold within two years.

72. Some Governments have chosen to encourage a more inclusive approach to private investment in housing in the form of financial incentives to encourage the development of affordable units. The Government of Algeria, for example, finances the development of rental housing for households earning less than 1.5 times the minimum wage, on free government land. It also provides a lease-to-own programme for households with little down-payment capacity.[87] Other Governments require that developers include a proportion of affordable units. The Mayor of London recently announced that builders will be required to ensure that 35 per cent of new homes that are built are genuinely affordable.[88]

73. Those types of programmes or agreements must be properly designed and monitored in order to be effective. For example, definitions of "affordability" do not always reflect actual income levels of those in housing need and accountability mechanisms to ensure that developers deliver are rarely in place. Additionally, agreements to include affordable housing within developments have sometimes resulted in the stigmatization of tenants occupying the affordable units. Referred to as the "poor door" phenomenon, low-income tenants are segregated from the more affluent residents, compelled to use separate, less attractive entrances and segregated services, such as laundry facilities and waste bins.[89]

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[81] British Columbia, Ministry of Finance, "Additional property transfer tax on residential property transfers to foreign entities in the Greater Vancouver Regional District: Property Transfer Tax Act" (27 July 2016). Available from www2.gov.bc.ca/assets/gov/taxes/property-taxes/property-transfer-tax/forms-publications/is-006-additional-property-transfer-tax-foreign-entities-vancouver.pdf.

[82] See City of Vancouver, "Empty homes tax". Available from http://vancouver.ca/home-property-development/empty-homes-tax.aspx.

[83] Ibid.

[84] See Sock-Yong Phang and Matthias Helbie, "Housing policies in Singapore", Asian Development Bank Institute Working Papers, No. 559 (Tokyo, Asian Development Bank Institute, 2016). Available from www.adb.org/sites/default/files/publication/181599/adbi-wp559.pdf.

[85] Andrew Heywood and Paul Hackett, "The case for property tax speculation", Smith Institute discussion paper (Smith Institute, 2013), p. 12. Available from https://smithinstitutethinktank.files.wordpress.com/2014/11/the-case-for-a-property-speculation-tax.pdf.

[86] Ibid.

[87] See Centre for Affordable Housing Finance in Africa, "2014 Yearbook: housing finance in Africa: a review of some of Africa's housing finance markets" (South Africa, November 2014). Available from www.housingfinanceafrica.org/wp-content/uploads/2014/11/CAHF-14.11.2014-small.pdf.

[88] See Dave Hill, "Sadiq Khan sets out key plans for more 'genuinely affordable' London homes", *Guardian*, 29 November 2016.

[89] See Hilary Osborne, "Poor doors: the segregation of London's inner-city flat dwellers", *Guardian*, 25 July 2014.

74. A range of initiatives has also been introduced in a number of States and cities to provide access to credit for low-income households based on alternative, community controlled models of microfinancing. Growing either from non-governmental organizations or microenterprise lenders, microfinance allows low-income households to finance construction over time, often in unplanned areas.

VII. Conclusions and recommendations: the way forward

75. **Despite the positive elements of some States' policy responses, overall responses have tended to be sporadic and reactive, addressing overheated markets or providing limited initiatives to expand access to credit. The broader systemic issues of financialization and commodification of housing remain largely unaddressed. What is lacking is for States to reclaim the governance of housing systems from global credit markets and, in collaboration with affected communities and with cooperation and engagement by central banks and financial institutions, redesign housing finance and global investment in housing around the goal of ensuring access to adequate housing for all by 2030.**

76. **Many States have been too deferential to the dynamics of unregulated markets and have failed to take appropriate action to bring private investment into line with the right to adequate housing. By providing tax subsidies for homeownership, tax breaks for investors, and bailouts for banks and financial institutions, States have subsidized the excessive financialization of housing at the expense of programmes for those in desperate need of housing. There seems to be a gross imbalance between the attention, mechanisms and resources that States have developed to support the financialization of housing and the complete deficit of housing for the implementation of the right to adequate housing.**

77. **The Special Rapporteur suggests that the way forward requires a shift to take hold so that States ensure that all investment in housing recognizes its social function and States' human rights obligations in that regard. That requires a transformation of the relationship between the State and the financial sector, whereby human rights implementation becomes the overriding goal, not a subsidiary or neglected obligation. The Special Rapporteur believes that can be achieved with more constructive engagement and dialogue between States, human rights actors, international and domestic financial regulatory bodies, private equity firms and major investors. In order to create those new conversations and achieve that shift, the Special Rapporteur recommends the following:**

(a) **New initiatives should be developed in order to bridge the worlds of corporate and government finance, housing, planning and human rights. The Special Rapporteur recommends that an international high-level meeting of States, international financial institutions, human rights bodies, civil society organizations and relevant experts be organized to design a strategy for engaging financial regulatory bodies and actors in the realization of the goal of adequate housing for all by 2030;**

(b) **Strategies developed by States and local governments to achieve target 11.1 of the Sustainable Development Goals and the New Urban Agenda should include a full range of taxation, regulatory and planning measures in order to re-establish housing as a social good, promote an inclusive housing system and prevent speculation and excessive accumulation of wealth;**

(c) **Trade and investment treaties should recognize the paramountcy of human rights, including the right to housing, and ensure that States are fully**

empowered to regulate private investment so as to ensure the realization of the right to housing;

(d) **Business and human rights guidelines should, on a priority basis, be developed specifically for financial actors operating in the housing system;**

(e) **States should review all laws and policies related to foreclosure, indebtedness and housing, to ensure consistency with the right to adequate housing, including the obligation to prevent any eviction resulting in homelessness;**

(f) **States must ensure that courts, tribunals and human rights institutions recognize and apply the paramountcy of human rights and interpret and apply domestic laws and policies related to housing and housing finance consistently with the right to adequate housing;**

(g) **International, regional and national human rights bodies should devote more attention to the issue of financialization and clarify for States, through constructive dialogue during periodic reviews and in consideration of individual cases, their obligations in relation to the financialization of housing.**