



# ADEQUATE HOUSING FOR ALL

NEPAL: ANALYSIS OF THE RIGHT TO HOUSING ACT 2018

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**Cover photo:** Nepalese homeless people watch police walking through a makeshift camp for people displaced by the 2015 earthquake after it was demolished by the authorities in Kathmandu on March 14, 2017. Two strong earthquakes struck Nepal in April and May 2015, killing over 8,000 people and leaving hundreds of thousands homeless within a period of three weeks

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# 1. OVERVIEW

The Government of Nepal has enacted the Right to Housing Act 2018, which came into force on 18 September 2018.<sup>1</sup> The purpose of the Act was to provide a legislative framework for the implementation of the right to housing guaranteed under Article 37 of the Constitution of Nepal of 2015.<sup>2</sup>

Amnesty International welcomes the guarantee of the right to housing as a fundamental right under the Constitution of Nepal and the subsequent enactment of the Act towards setting the legislative framework necessary to implement the right. This development represents a step forward in terms of turning the constitutional guarantee of the right to housing into a reality.

However, Amnesty International has noted that the Act fails to fully meet Nepal's international human rights obligations concerning the right to adequate housing.<sup>3</sup> While numerous provisions (for example, protection against forced evictions under Section 5) in the Act are inconsistent with international human rights law, other provisions required for realization of the right to housing are absent (for example, definitions of key terms, prevention of homelessness, rental housing, security of housing tenure, mechanism to advise on policy making and oversee implementation).<sup>4</sup>

Following the enactment of the law, civil society organizations in Nepal came together to review the Act and identify its strengths and weaknesses.<sup>5</sup> As an outcome of their review exercise and consultations with the stakeholders, they made a submission to the Ministry of Law and Justice raising several concerns over the Act.<sup>6</sup> One of the key concerns that civil societies raised relates to gaps in terms of protection against forced eviction, statutory recognition of security of tenure, and obligations to ensure adequate housing for all.<sup>7</sup>

Amnesty International's publication entitled *Nepal: Adequate housing for all - Comments and recommendations for strengthening the Right to Housing Act 2018* offers the following comments and recommendations on the Act with a view to assist the authorities in Nepal to strengthen the legal framework.

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<sup>1</sup> On 14 August 2018, the Ministry for Urban Development had submitted a "Bill made to provide for the right to housing" in the Parliament Secretariat of Nepal.

<sup>2</sup> Article 37. Right to housing: (1) Every citizen shall have the right to an appropriate housing. (2) No citizen shall be evicted from the residence owned by him or her nor shall his or her residence be infringed except in accordance with law. See below detailed analysis of the constitutional framework concerning the right to housing ("3. Constitutional Promises").

<sup>3</sup> See below detailed description of the international legal framework applicable in Nepal ("4. International Human Rights Obligations").

<sup>4</sup> See below detailed commentary on the Act ("5. Comments on the Act").

<sup>5</sup> An Interactive Workshop dated 1 November 2018 and an Expert Review Workshop on "Fundamental Rights Implementation Laws" dated 12-13 October 2018 were jointly organized by Justice and Rights Institute (JuRI-Nepal), Community Self-Reliance Centre (CSRC), National Network on ESCR and Right to Food Network-Nepal with the support from Amnesty International.

<sup>6</sup> JuRI Nepal, [www.facebook.com/jurinepal.org.np/posts/1812004958925822](https://www.facebook.com/jurinepal.org.np/posts/1812004958925822)

<sup>7</sup> See a Memorandum containing concerns and suggestions on recently enacted laws (Right to Food and Food Sovereignty Act, Right to Housing Act and Land (Seventh Amendment) Act) submitted to the Minister for Law, Justice and Parliamentary Affairs, Honorable Bhanu Bhakta Dhakal, by a group of civil society organizations in Nepal on 11 December 2018. [www.amnestynepal.org/campaigns/ai-nepal-activities/suggestions-on-three-laws-on-fundamental-rights-submitted-to-the-law-minister.html](http://www.amnestynepal.org/campaigns/ai-nepal-activities/suggestions-on-three-laws-on-fundamental-rights-submitted-to-the-law-minister.html)

# 2. CONTEXT AND BACKGROUND

Adequate housing for all continues to remain one of the human rights and development challenges in Nepal. As estimated in the National Census, 49% of Nepal's population lives in substandard housing.<sup>8</sup> Less than 30% of people's houses are considered structurally safe.<sup>9</sup> Further, as revealed by UN-Habitat's *Nepal: Urban housing sector profile*, about 10% of urban dwellers in Nepal are "squatters" or people who do not currently have a legally recognised right to the house or land they occupy.<sup>10</sup> Soaring land prices and increasing rural-urban migration has made it difficult for those living in poverty to afford adequate housing, especially in the fast-growing urban areas.<sup>11</sup> The proposed targets for 2030 set by the Government of Nepal include doubling the proportion of households living in safe houses to 60%.<sup>12</sup>

There is a huge demand for structurally safe houses in urban areas. The private sector is emerging as an active player in urban housing. But housing is inadequate and expensive.<sup>13</sup> There exists a government-run *Janata Awas Karyakram* (People's Housing Program) initiated from 2009. However, its coverage is limited in terms of geography (27 districts) and beneficiaries (Dalits and Muslims households living in poverty and Indigenous Peoples on the verge of extinction).<sup>14</sup> As housing finance offered by banks and financial institutions carries high interest rates, affordable housing is challenging for people living in poverty and with low income. Also, banks and financial institutions often require a house or land as collateral to provide a housing loan. Currently, there is a lack of appropriate housing finance or subsidized loans available to those living in poverty.<sup>15</sup>

Occurrence of natural disasters and impacts of climate change frequently exacerbate the housing problem in Nepal. For example, the earthquake of 2015 significantly worsened the housing situation

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<sup>8</sup> Habitat for Humanity, *Nepal: Country Profile*, [www.habitat.org/sites/default/files/documents/Nepal\\_FY19\\_FINAL.pdf](http://www.habitat.org/sites/default/files/documents/Nepal_FY19_FINAL.pdf)

<sup>9</sup> Government of Nepal, National Planning Commission, *Sustainable Development Goals: Status and roadmap (2016-2030)*, p. 33, [www.np.undp.org/content/nepal/en/home/library/sustainable-development-goals-national-report---nepal/sustainable-development-goals-status-and-roadmap-2016-2030.html](http://www.np.undp.org/content/nepal/en/home/library/sustainable-development-goals-national-report---nepal/sustainable-development-goals-status-and-roadmap-2016-2030.html)

<sup>10</sup> See UN-Habitat's, *Nepal: Urban housing sector profile*, 2010, p. iii, <https://unhabitat.org/books/nepal-urban-housing-sector-profile/>

<sup>11</sup> *Ibid.*, p. 9.

<sup>12</sup> *Ibid.*, p. 34.

<sup>13</sup> *Ibid.*, p. 33.

<sup>14</sup> In the fiscal budget for 2018/2019, the Government of Nepal allots budget with the aim to build 30,000 houses. Available at: <https://mof.gov.np/en/>

<sup>15</sup> As per the recent figure of Nepal Rastra Bank, there has been Rs 88 billion worth of investment in housing and real estate. Of this, the share of commercial banks is Rs 65 billion, that of development banks is Rs 12 billion, and that of finance companies is Rs 10 billion. The contribution of the housing and real estate sector to the gross domestic product of Nepal is 8%. The Employee Provident Fund (EPF) has invested Rs 700 million in the building and housing sector, which is hardly 1% of the total loan and investment of the EPF. All these figures clearly suggest that there is no shortage of resources or funds in this sector; there are still great possibilities of mobilizing additional resources to meet the housing finance needs of the poor and low-income families. See, "Housing becoming unaffordable for the urban poor", *The Himalayan Times*, 3 January 2018, <https://thehimalayantimes.com/kathmandu/473098/>

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when more than 700,361 houses were destroyed in the 14 most affected districts.<sup>16</sup> Those worst affected by the earthquakes were those already marginalized, including landless people, women, Dalits and other caste-based and ethnic minorities. In 2017, massive floods in Tarai districts and landslides in hill districts left 43,400 houses fully destroyed and 191,700 partially destroyed.<sup>17</sup> Recent rainstorm in March 2019 damaged more than 2,400 houses in Bara and Parsa districts.<sup>18</sup>

Many of those who suffered the most as a result of the natural disasters are from marginalized ethnic groups and so-called “lower castes”, families with persons with disabilities or severe health problems, and single-headed households.<sup>19</sup> To date, a substantive portion of the earthquake victims is waiting to receive the financial support promised to them by the government. As noted by the National Reconstruction Authority (NRA)’s press release in the context of the 4<sup>th</sup> Earthquake Remembrance Day, only 50% of households who were left homeless have built their homes with the housing grant provided by the government. Four years on, 50% of those made homeless by the earthquake are desperately waiting to have their home re-built with the housing grant. Out of them, 30% are in the process of re-building. However, 20% have not even started their reconstruction work.<sup>20</sup>

Amnesty International’s 2017 research entitled '*Building inequality: The failure of the Nepali Government to protect the marginalized in post-earthquake reconstruction efforts*' identified that not only had the reconstruction process been slow, but also that it was flawed in many respects.<sup>21</sup> Especially, the landless people (living as sharecroppers on landlords’ land or as squatters on government land) were not able to qualify for government grants to re-build their homes as they did not possess a land certificate – the main document required in the reconstruction grant model chosen by the government. Exclusion from government grants to re-build houses left those already marginalized in an even more disadvantaged position. Based on the research, Amnesty International called on the Government of Nepal to:

- Guarantee the right to adequate housing to all earthquake-affected persons giving due priority to the most disadvantaged groups including landless persons.
- Ensure that equal recognition is given to all forms of tenure and all those whose houses have been destroyed receive grants.
- Effectively implement policies to ensure landless people and multiple households living under one roof, who had their homes destroyed, receive cash grants via investigation by government officials and through testimonies of neighbours and people in their communities.

However, there hasn't been adequate progress towards addressing the stated recommendations. The NRA’s press release dated 23 April 2019 indicates that the government would be addressing the problems of lack of housing faced by landless earthquake victims. However, it does not provide any details regarding a plan for implementing this or timelines for the same.<sup>22</sup> As revealed by a recent UN report entitled "*Community perception report: Reconstruction, food security & livelihood and protection*",<sup>23</sup> the grant that was provided to the earthquake victims by the government was inadequate to build houses, given the high costs of building materials, and the situation was exacerbated by the fact that many of the victims of the earthquake are also struggling with financial

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<sup>16</sup> Data as of 16 March 2017 provided by National Reconstruction Authority (NRA). See Amnesty International, '*Building inequality: The failure of the Government to protect the marginalized in post-earthquake reconstruction efforts*' (Index: ASA 31/6071/2017), p. 14.

<sup>17</sup> Office of the Resident Coordinator Situation Report No. 9, *Nepal: Flood 2017*, (as of 20 September 2017), <https://reliefweb.int/sites/reliefweb.int/files/resources/Nepal%20Flood%20Sitrep%2022%20September%202017.pdf>

<sup>18</sup> Aljazeera, “Nepal storm: Entire village mourning ‘but for others, it is a festival’”, [www.aljazeera.com/blogs/asia/2019/04/nepal-storm-entire-village-mourning-festival-190404071315807.html](http://www.aljazeera.com/blogs/asia/2019/04/nepal-storm-entire-village-mourning-festival-190404071315807.html)

<sup>19</sup> Habitat for Humanity, Nepal, [www.habitat.org/where-we-build/nepal](http://www.habitat.org/where-we-build/nepal)

<sup>20</sup> Press Release dated 23 April 2019 by National Reconstruction Authority, which is a statutorily mandated to oversee reconstruction and put in place numerous laws and policies to facilitate the reconstruction and with international donor assistance, is also implementing a Rural Housing Reconstruction Programme (RHRP). [www.nra.gov.np/np/resources/details/ErQA3xCSYYfzylqqkz6I9fz6GKey1aZp1j8INaxV43Q](http://www.nra.gov.np/np/resources/details/ErQA3xCSYYfzylqqkz6I9fz6GKey1aZp1j8INaxV43Q)

<sup>21</sup> Amnesty International, '*Building inequality: The failure of the government to protect the marginalized in post-earthquake reconstruction efforts*' (Index: ASA 31/6071/2017), pp. 44-45.

<sup>22</sup> Press release, [www.nra.gov.np/np/content/press/0](http://www.nra.gov.np/np/content/press/0)

<sup>23</sup> UN Resident Coordinator’s Office, *Community perception report: Reconstruction, food security & livelihood and protection*, November 2018, p. 11, [www.cfp.org.np/uploads/documents/reconstruction-November2018-December-18-2018-16-55-20.pdf](http://www.cfp.org.np/uploads/documents/reconstruction-November2018-December-18-2018-16-55-20.pdf)

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problems because these were already people living in poverty and the earthquake affected their livelihoods.

# 3. CONSTITUTIONAL PROMISES

For the first time, the 2015 Constitution of Nepal recognizes the right to housing as a part of fundamental rights in a standalone clause.<sup>24</sup> Article 37 on the “right relating to housing” provides twofold guarantees: (1) Every citizen shall have the right to appropriate housing and that (2) No citizen shall be evicted from the residence owned by him or her nor shall his or her residence be infringed except in accordance with law.

Although not crafted that way in the initial draft language proposed by the Constituent Assembly’s Committee on Fundamental Rights and Directive Principles,<sup>25</sup> the guarantee against forced eviction under Article 37(2) came into existence with a shortcoming. The protection against forced eviction under this sub-clause is completely “owner-driven” –meaning that the protection against forced eviction is only available to those who own the house or land they occupy. Contrary to international human rights law ratified by Nepal, the protection from forced evictions is not available to those who rent or lease the house or those who do not have security of tenure. To claim protection against forced eviction, this provision requires proof of land ownership as a condition. Unless a judicial interpretation is adopted in view of other rights including the right to equality (Article 18) and right to live with dignity (Article 16), the enforcement of Article 37(2) would result in a licence for the authorities to forcibly evict slum dwellers or informal settlers with impunity. This situation deserves to be rectified either through judicial interpretation<sup>26</sup> or by introducing a constitutional amendment. Similarly, the scope of constitutional protection under Article 37 confined to the citizens needs to be extended to all.

The Constitution also creates a separate set of state obligations to provide housing to the groups that have been marginalized and discriminated against. Under the section on rights of Dalits, “The State shall, in accordance with the law, arrange settlement for the Dalits who do not have housing.”<sup>27</sup> As a part of the “Right to Social Justice”, “special opportunities and benefits”, including in terms of housing, are guaranteed for indigent citizens and citizens of the communities on the verge of extinction.<sup>28</sup> The guarantee reads: “The indigent citizens and citizens of the communities on the verge of extinction shall have the right to get special opportunities and benefits in education, health, housing, employment, food and social security for their protection, upliftment, empowerment and development.” In Article 42(5), “the right to get a prioritized opportunity, with justice and due

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<sup>24</sup> Though the Interim Constitution of Nepal 2007 had recognized a number of economic, social and cultural rights, there was no guarantee concerning the right to housing, which was basically confined to the directive principles and the policies of the state.

<sup>25</sup> As crafted by the Committee, the right to housing clause reads: “(1) Every citizen shall have the right to proper housing as provided for in law. (2) No citizen shall be evicted from the place of residence and no infringement shall be made on the residence except in accordance with law or an order issued by a court of law.” See the Preliminary Draft Section of the Concept (2009) submitted by the Constituent Assembly’s Committee on Fundamental Rights and Directive Principles, p. 45.

<sup>26</sup> By virtue of Articles 133(1) and 126(1), the Supreme Court is empowered to adopt a harmonious interpretation of any of the guarantees under the fundamental rights in view of Nepal’s international human rights obligations.

<sup>27</sup> The Constitution of Nepal 2015, Article 40(6).

<sup>28</sup> Ibid, Article 42(2).



respect, in education, health, employment, housing and social security, in accordance with law” is guaranteed for the victims of the past conflicts, democratic revolutions and movement.<sup>29</sup>

Other fundamental rights are also of special importance in terms of ensuring full realization of the right to housing. Article 16 of the Constitution guarantees the fundamental right to live with dignity. In a number of cases, the Supreme Court of Nepal has utilized the right to live with dignity to hold the government accountable for not providing shelter to those unable to provide for themselves.<sup>30</sup> Further, Article 18 of the Constitution requires the state to put in place special measures, including by legislation, in order to enable a number of groups, including women, Dalits, Madhesi, Indigenous Peoples including Tharu and small farmers, to live a life with dignity and equality.<sup>31</sup> Such special measures or arrangements could be made for improving housing conditions particularly for groups who have been marginalized or are discriminated against, and preventing homelessness.

Numerous promises with implications for the right to housing have also been made under the Directive Principles (Articles 50 and 51) and the policies of the state. Although the Directive Principles are not enforceable by courts, the Supreme Court has already recognized their linkages with fundamental rights and upheld their enforceability. For example, in the *Yogi Naraharinath case*, the Supreme Court clarified that the Court can scrutinize any decision of the government that goes against the Directive Principles and state policies.<sup>32</sup> The ratio decidendi (rationale) of the *Yogi Naraharinath case* has been followed by the Supreme Court in several subsequent cases challenging the executive decisions that are contrary to the Directive Principles.

Under policies regarding “social justice and inclusion” there is a clear guidance for the State “to identify the freed bonded labour[er]s, Kamlari, Harawa, Charawa, tillers, landless, squatters and rehabilitate them by providing housing, housing plot for residence and cultivable land or employment for their livelihoods.”<sup>33</sup> Similarly, the state is directed to “make Indigenous peoples participate in decisions concerning them” and make “special provisions for opportunities and benefits in order to guarantee the right of these nationalities to live with dignity, along with their identity”.<sup>34</sup> The state is also entrusted with a responsibility for “upliftment, empowerment and development of the citizens belonging to oppressed and backward regions” including through making special provisions “for the fulfilment of their basic needs”.<sup>35</sup> Additionally, the Constitution also provides a policy direction to prioritize “indigent within all sexes, regions and communities in the provision of social security and social justice”. In terms of clarifying the responsibility towards mitigation of risk from natural disasters,<sup>36</sup> the Constitution lays down that the state is responsible for “warning, preparedness, rescue, relief and rehabilitation”.<sup>37</sup> Under the policies relating to basic needs of the citizens, the state is directed to manage unplanned settlement and develop planned and systematic settlement.<sup>38</sup>

As stated in the National Housing Policy of 2012, the vision of the state is to “provide safe, adequate and affordable housing to all”. Similarly, a mission statement of the Policy aspires to bring “the families remaining below the poverty line and residing in unplanned and unsafe settlements” into the arena of housing.

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<sup>29</sup> Article 42(5) reads: “The families of the martyrs who have sacrificed their life, persons who were forced to disappear, and those who became disabled and injured in all people’s movements, armed conflicts and revolutions that have been carried out for progressive democratic changes in Nepal, democracy fighters, conflict victims and displaced ones, persons with disabilities, the injured and victims shall have the right to get a prioritized opportunity, with justice and due respect, in education, health, employment, housing and social security, in accordance with law.”

<sup>30</sup> For example, recognizing the link between the right to live with dignity and the right to food sovereignty the Supreme Court in *Prakash Mani Sharma and other for Pro Public v. Government of Nepal (Writ No. 2065-w0-149)* stated that the no one can live without food and unless the scarcity of food is addressed immediately, irreparable loss is imminent, and the later the remedy the more it will be like availing the doctor after death of the patient. For details, see, UN Food and Agriculture Organization, Review of the legislative framework and jurisprudence concerning the right to adequate food in Nepal, 2014, pp. 99-108, [www.fao.org/right-to-food/resources/resources-detail/en/c/253864/](http://www.fao.org/right-to-food/resources/resources-detail/en/c/253864/)

<sup>31</sup> The Constitution of Nepal 2015, Proviso of Article 18(3).

<sup>32</sup> *Yogi Naraharinath et al. v. Rt. Honourable Prime Minister Girija Prasad Koiralaa and Others [1996] NKP* p. 33.

<sup>33</sup> The Constitution of Nepal 2015, Article 51j(6).

<sup>34</sup> *Ibid*, Article 51j(8).

<sup>35</sup> *Ibid*, Article 51j(11).

<sup>36</sup> This is as a part of the “Policies relating to protection, promotion and use of natural resources”.

<sup>37</sup> The Constitution of Nepal 2015, Article 51g(9).

<sup>38</sup> *Ibid*, Article 51h(11).

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# 4. INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

The right to housing recognized as part of the right to an adequate standard of living in the Universal Declaration of Human Rights (UDHR) 1948<sup>39</sup> has subsequently been guaranteed under several treaties binding on Nepal:

- the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>40</sup>
- the Convention on the Rights of the Child (CRC)<sup>41</sup>
- the Convention on the Elimination of All Forms of Racial Discrimination (CERD)<sup>42</sup>
- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>43</sup>
- the Convention on Rights of Persons with Disabilities (CRPD)<sup>44</sup>

Nepal has also ratified the International Labour Organization (ILO)'s Indigenous and Tribal Peoples Convention, 1989 (ILO Convention 169)<sup>45</sup> which has also implications for the right to housing of Indigenous Peoples.

Article 11(1) of the ICESCR is central for the protection of the right to adequate housing: “The States parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself [or herself] and his [or her] family, including adequate food, clothing and housing, and the continuous improvement of living conditions. The State parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the importance of international co-operation based on free consent.”

The scope of Article 11 is elaborated in the Committee on Economic, Social and Cultural Rights (CESCR)'s General Comment 4 (1991) on the right to adequate housing<sup>46</sup> and 7 (1997) on forced

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<sup>39</sup> Article 25(1) of the UDHR reads: “(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

<sup>40</sup> Accessed on 14 September 1990.

<sup>41</sup> Accessed on 14 September 1990

<sup>42</sup> Accessed on 13 January 1971.

<sup>43</sup> Accessed on 22 April 1991.

<sup>44</sup> Accessed on 7 May 2010.

<sup>45</sup> Ratified on 27 August 2007.

<sup>46</sup> General Comment 4: The Right to adequate housing (Article 11(1) of the Covenant), UN Doc. E/1992/23, [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en)  
[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en)

evictions.<sup>47</sup> The right to housing entails seven integral components: legal security of tenure;<sup>48</sup> availability of services, materials, facilities and infrastructure;<sup>49</sup> affordability;<sup>50</sup> habitability,<sup>51</sup> accessibility;<sup>52</sup> location;<sup>53</sup> and cultural adequacy.<sup>54</sup> The right to non-discrimination set out in Article 2(2) of the ICESCR applies to all ESCRs including the right to adequate housing.<sup>55</sup>

ICERD contains a provision that prohibits discrimination on account of race, colour, or national or ethnic origin with respect to the right to housing.<sup>56</sup> Similarly, CEDAW obliges states parties to eliminate discrimination against women in rural areas in order to ensure that such women enjoy adequate living conditions, particularly in relation to housing.<sup>57</sup> CRC also places an obligation on state parties to provide in cases of need, material assistance and support programmes to families and children, particularly with regard to housing.<sup>58</sup>

The Committee of the ICESCR (CESCR) made it clear that the “the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity.”<sup>59</sup> It has also pointed out the importance of the concept of adequacy and underlined all seven factors which must be taken into account in determining whether particular forms of shelter can be considered to constitute “adequate housing” for the purposes of the Covenant.<sup>60</sup> It further states that priority consideration should be given to “such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters and those people living in disaster-prone areas”. It also clarified that housing law and policy should take fully into account the special housing needs of such groups, including policies to increase access to land by landless or impoverished segments of society.<sup>61</sup>

In view of the nature and scope of state obligations under Article 2(1) of the ICESCR,<sup>62</sup> states parties’ obligations to realize the right to adequate housing are of threefold: the obligations to respect, to protect and to fulfil.

The Government of Nepal is thus required to comply with these obligations by a) refraining from interfering directly or indirectly with the enjoyment of the right to adequate housing; b) preventing third parties such as individuals, private entities and other non-state actors, from interfering with the

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<sup>47</sup> General Comment 7: The Right to adequate housing (Article 11(1) of the Covenant): Forced evictions, UN Doc. E/1998/22, Annex IV, [https://tinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f6430&Lang=en](https://tinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f6430&Lang=en)

<sup>48</sup> Security of tenure that guarantees protection against forced evictions, harassment, and other threats, including predatory redevelopment and displacement.

<sup>49</sup> Availability of certain facilities essential for health, security, comfort, and nutrition.

<sup>50</sup> Affordability of the housing facilities at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised.

<sup>51</sup> Habitability in the sense that the housing is safe from cold, damp, heat, rain, wind, or other threats to health; structural hazards; and disease.

<sup>52</sup> Accessibility of housing resources for all appropriateness of location that allows access to employment options, health-care services, schools, child-care centers, and other social facilities.

<sup>53</sup> Adequate housing must be in a location which allows access to employment options, health-care services, schools, childcare centers and other social facilities.

<sup>54</sup> Cultural adequacy in the sense that there should be a guarantee of the expression of cultural identity and diversity, including the preservation of cultural landmarks and institutions.

<sup>55</sup> Article 2(2) provides: “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

<sup>56</sup> Article 5(e)(iii).

<sup>57</sup> Article 14(2)(h).

<sup>58</sup> Article 27(3).

<sup>59</sup> CESCR, General Comment 4: The Right to adequate housing (Article 11(1) of the Covenant), UN Doc. E/1992/23, para. 7.

<sup>60</sup> CESCR, General Comment 4, paras 7, 13.

<sup>61</sup> CESCR, General Comment, para. 8(e).

<sup>62</sup> “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

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enjoyment of the right to adequate housing; and c) adopting progressive legislative, administrative, budgetary, promotional and other measures to fully realize the right to adequate housing.

States parties have the duty to prioritize their “minimum core obligations”, to ensure minimum essential levels of each of the rights for all. The Committee has clarified that “a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant.”<sup>63</sup>

The respective treaty bodies have assessed Nepal’s efforts to comply with the treaty obligations and made several recommendations with implications for the right to housing. Following are key recommendations by the CESCR, CERD and the CEDAW Committee respectively:

- Enact legislation to determine the circumstances and safeguards under which evictions can take place and ensure that evictions are only used as a last resort.<sup>64</sup>
- Ensure that victims of forced evictions are provided with alternative housing or adequate compensation.<sup>65</sup>
- Guarantee that evictions are carried out in accordance with international standards.<sup>66</sup>
- Ensure that freed bonded labourers are entitled to full rehabilitation and integration including through enhancing their access to housing.<sup>67</sup>
- Fund voluntary and sustainable resettlement and rehabilitation of former bonded labourers, including through the provision of “affordable and adequate housing”.<sup>68</sup>
- Adopt a special opportunity act and take measures to enhance access for women facing intersecting and multiple forms of discrimination,<sup>69</sup> among others, to housing, credit and income-generating opportunities.<sup>70</sup>

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<sup>63</sup> CESCR, General Comment 3. The Nature of states parties obligations (Article 2, para. 1 of the Covenant) (Fifth session, 1990), UN Doc. E/1991/23, para. 10, [www.escr-net.org/resources/general-comment-3](http://www.escr-net.org/resources/general-comment-3)

<sup>64</sup> CESCR, Concluding Observations on the third periodic report of Nepal, adopted at its 70th Meeting held on 28 November 2014, para. 24(a).

<sup>65</sup> *Ibid.*, para. 24(b).

<sup>66</sup> CERD, Concluding Observations (1 May 2018) on seventeenth to twenty-third periodic report of *Nepal* on its implementation of the provisions of the ICERD, para. 14.

<sup>67</sup> CESCR, Concluding Observations on the third periodic report of Nepal, adopted at its 70th Meeting held on 28 November 2014, para. 18.

<sup>68</sup> CERD, Concluding Observations (1 May 2018) on seventeenth to twenty-third periodic report of *Nepal* on its implementation of the provisions of the ICERD, para. 28.

<sup>69</sup> Including Indigenous, Dalit women, rural women, women with disabilities and widows in the Hindu community, as well as women affected by conflict and natural disasters.

<sup>70</sup> CEDAW Committee, Concluding Observations on the sixth periodic report of Nepal, 14 November 2018, para. 17(a).

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# 5. COMMENTS ON THE RIGHT TO HOUSING ACT

## 5.1. SCOPE OF THE ACT

The Preamble illustrates that the Act was envisioned “to make a necessary arrangement to provide appropriate and safe housing facilities to homeless Nepali citizens”.<sup>71</sup> While the focus on providing housing for homeless people is of utmost important, the scope of the Act should also have entailed all important elements of the right to housing. It is particularly important for this legislation to aim for “addressing underlying causes of homelessness” including the forced eviction, denial of security housing and land tenure, discrimination and exclusion and “creating conducive environment for enjoyment of the right to adequate housing by all” in view of the Constitutional framework<sup>72</sup> and international human rights obligations.

From an overall perspective, it is also noticeable that the government’s approach to housing in this Act is primarily oriented towards an ownership-based model. However, adequate housing is not only about owning a house but having access to a house with security of tenure. This includes rental housing as well, and protections to ensure that housing in the rental market is affordable for all and laws and regulations are put in place to protect tenants from arbitrary actions by landlords including forced evictions, arbitrary rent increases, failure to ensure that the housing meets minimum standards, etc. The absence of necessary provisions on rental housing in the Act is a glaring gap which should be addressed through amendment.

### *Recommendation*

- *Amend the Act to widen its scope to cover “addressing underlying causes of homelessness” and “creating a conducive environment for enjoyment of the right to adequate housing by all including those belonging to groups that are marginalized and discriminated against.”*
- Amend the Act to insert provisions dealing with rental housing to ensure that housing in the rental market is affordable and tenants are protected from arbitrary actions by landlords.

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<sup>71</sup> Preamble, The Right to Housing Act, 2018.

<sup>72</sup> See detailed discussion of the constitutional framework above (“3. Constitutional Promises”).

## 5.2. LEGAL PROTECTION FOR NON-CITIZENS

Contrary to the applicability of the right to housing to all,<sup>73</sup> the preamble and Section 3 of the Act have confined the scope of legal protection to citizens only.<sup>74</sup> This is the case in Article 37 of the Constitution that provides for the right to housing. The Act bars non-citizens from claiming even core elements (for example, security of tenure, protection from forced eviction) of the right to housing guaranteed under the ICESCR.<sup>75</sup> The UN's Office of the High Commissioner for Human Rights (OHCHR) has clarified that states have the obligation to guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens, especially by avoiding segregation in housing and ensuring that housing agencies refrain from engaging in discriminatory practices.<sup>76</sup>

As stated by CESCR in its General Comment 3, “a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant.” The non-citizens including migrants and refugees thus cannot be denied essential access to the right to housing. All residents should be protected, by legislation and other effective measures, from discrimination, harassment, withdrawal of services or other threats.<sup>77</sup> Amnesty International calls on the Government of Nepal to amend the Act to ensure that all persons within its jurisdiction have access to the core minimum content of the right to adequate housing.

### *Recommendation*

- *Expand the scope of the legal protection to non-citizens including migrants and refugees, especially in the context of ensuring the core minimum elements (for example, protection from forced eviction, harassment and discrimination) of the right to adequate housing.*

## 5.3. DEFINITIONS OF KEY TERMS

Clear and appropriate definitions of terms used in the context of the right to housing are key to guarantee uniform application and effective implementation of law. While the new law on the right to housing contains definitions of a few terms including “housing” and “homeless”, it fails to adequately define key terms such as “homelessness”, “security of tenure”, “affordability of housing”, and “adequacy of housing”. While “housing” is defined under Section 2(a) of the Act to include “the building, house, its section or any such permanent or temporary, partial or full structure built for residential purpose”, “homeless” is meant for “an individual or family that is to be provided housing facility as per Section 7.” As provided under Section 7, “housing facility” is provided to “(a) Those who do not have house and land under one’s or one’s family ownership within the Nepal state or are unable to manage housing through one’s or one’s family income, source or effort” and “(b) Those who have been permanently displaced due to natural disasters and is in a condition as stated under Section 7(a).” Though the term “housing facility” is used throughout the Act, there is no clarity on what exactly constitutes the “housing facility”.

General Comment 4 of CESCR provides internationally accepted definitions of some of the key concepts that comprise the right to adequate housing. As interpreted by the CESCR, “security of

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<sup>73</sup> Article 11(1) of the ICESCR obligates states parties to “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”.

<sup>74</sup> Section 3(1) reads: “Every citizen shall have the right to appropriate housing and the respect, protection and fulfilment of such right shall be made as per this Act and other prevalent legislation.”

<sup>75</sup> See General Comment 4 (1991) of the Committee on Economic, Social and Cultural Rights on the right to adequate housing. As stated in the General Comment, the state party is obligated to guarantee the equal enjoyment of the right to adequate housing for both citizens and non-citizens.

<sup>76</sup> OHCHR, The Rights of non-citizens, 2006, [www.ohchr.org/documents/publications/noncitizensen.pdf](http://www.ohchr.org/documents/publications/noncitizensen.pdf)

<sup>77</sup> *Fact sheet no. 21, The Human right to adequate housing*, [www.un.org/ruleoflaw/files/FactSheet21en.pdf](http://www.un.org/ruleoflaw/files/FactSheet21en.pdf)

tenure” refers to a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats regardless of the type of tenure.<sup>78</sup> Housing is considered affordable if “personal or household financial costs associated with housing are at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised.”<sup>79</sup> As summarized by OHCHR and UN-Habitat, adequacy of housing<sup>80</sup> is understood in terms of the following five dimensions:

- *“Habitability:* Adequate housing should provide for elements such as adequate space, protection from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors”.
- *“Availability of services, materials, facilities and infrastructure:* Housing is not adequate if its occupants do not have safe drinking water, adequate sanitation, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, etc”.
- *“Accessibility:* Housing is not adequate if the specific needs of disadvantaged and marginalized groups are not taken into account (such as the poor, people facing discrimination; persons with disabilities, victims of natural disasters)”.
- *“Location:* Adequate housing must allow access to employment options, health-care services, schools, child-care centers and other social facilities and should not be built on polluted sites nor in immediate proximity to pollution sources”.
- *“Cultural adequacy:* Adequate housing should respect and take into account the expression of cultural identity and ways of life”.

Further, in the case of homelessness, as described by the Special Rapporteur on the adequate housing, homelessness means not only the absence of home<sup>81</sup> but also a manifestation of patterns of discrimination that systematically affects certain groups.<sup>82</sup>

### **Recommendation**

- *Amend the Act to define key terms including “homelessness”, “security of tenure”, “affordability of housing” and “adequacy of housing” in line with the international human rights standards.*

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<sup>78</sup> OHCHR, *The Right to adequate housing toolkit*,

[www.ohchr.org/EN/Issues/Housing/toolkit/Pages/RighttoAdequateHousingToolkit.aspx](http://www.ohchr.org/EN/Issues/Housing/toolkit/Pages/RighttoAdequateHousingToolkit.aspx)

<sup>79</sup> CESCR General Comment 4: The Right to adequate housing (Article 11(1)), para. 4, UN Doc. E/1992/23, [www.escr-net.org/resources/general-comment-4](http://www.escr-net.org/resources/general-comment-4)

<sup>80</sup> See, *The Right to adequate housing toolkit*,

[www.ohchr.org/EN/Issues/Housing/toolkit/Pages/RighttoAdequateHousingToolkit.aspx](http://www.ohchr.org/EN/Issues/Housing/toolkit/Pages/RighttoAdequateHousingToolkit.aspx)

<sup>81</sup> “Absence of home may include a range of experiences and deprivations, both physical and social. In some circumstances, absence of physical shelter may be the primary concern, in other contexts, lack of access to land may be equally critical. While some residents of informal settlements do not self-identify as homeless but are rather struggling for upgrading, services and security of existing homes, for others who live in precarious situations, sometimes renting informally and subject to eviction at a moment’s notice or in grossly inadequate shelter, informality is a form of homelessness. Intertwined with physical deprivations and lack of security is the loss of social connection – the feeling of “belonging nowhere.” For street connected children, homelessness may be experienced as a reliance on substitute social connections, established for survival on the street.” See *Homelessness and human rights: Summary of the Report of the Special Rapporteur on the right to adequate housing, Leilani Farha*, UN Doc. A/HRC/31/54, [www.ohchr.org/Documents/Issues/Housing/HomelessSummary\\_en.pdf](http://www.ohchr.org/Documents/Issues/Housing/HomelessSummary_en.pdf)

<sup>82</sup> “Homelessness is directly linked to systemic patterns of discrimination, and it disproportionately affects particular groups, including women, young people, children, indigenous peoples, people with disabilities, migrants and refugees, the working poor, and lesbian, gay, bisexual and transgender people, each in different ways, but with common structural causes. The report also identifies that homeless people also constitute a discreet social group, suffering discrimination, stigmatization, criminalization and social exclusion based on imputed characteristics. Homeless people are rendered voiceless and invisible, banished to the peripheries of cities and towns, out of sight. Their humanity and dignity are rarely considered in legislation, public policies and strategies.” *Ibid*, p. 2.

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## 5.4. PREVENTION OF HOMELESSNESS

As articulated by the UN Special Rapporteur on adequate housing, homelessness is an extreme violation of the rights to adequate housing and non-discrimination and often also a violation of the rights to life, to security of person, to health, to protection of the home and family and to freedom from cruel and inhuman treatment.<sup>83</sup> It is an evidence of the failure of states to protect and ensure the human rights of the most vulnerable populations.<sup>84</sup> According to the Special Rapporteur, homelessness “disproportionately affects particular groups, including women, young people, children, indigenous peoples, people with disabilities, migrants and refugees, the working poor, and lesbian, gay, bisexual and transgender people.”<sup>85</sup> The Special Rapporteur also describes the plight of homeless people as follows:

“Instead of being treated as a group of rights bearers whose rights have been systematically violated, homeless people have become a stigmatized group subject to criminalization, discrimination and social exclusion. To be homeless is to experience acts of violence, a shortened life span and ill-health and to be criminalized for survival strategies for eating or sleeping in public space. Homeless people are rendered voiceless and invisible, banished to the peripheries of cities and towns, out of sight. Their humanity and dignity are rarely considered in legislation, public policies and strategies.”<sup>86</sup>

Prevention of homelessness and protection of homeless people is a minimum core element of the right to adequate housing which must be immediately fulfilled by the state.<sup>87</sup> As a state party to ICESCR, Nepal is thus bound by international human rights law to take immediate steps to prevent homelessness. This is also one of the Sustainable Development Goals (SDGs) that Nepal committed to.<sup>88</sup>

While it is welcome to have a provision for providing housing to those who lack adequate housing, the Act does not create specific obligations to prevent homelessness. It can be prevented through measures including addressing its’ underlying causes such as failure to address growing inequalities in income, wealth and lack of access to land and property.<sup>89</sup>

The Act should also have provisions for a periodic assessment of the situation of homelessness in the country, identification of homeless people, a mechanism to respond to the situation of homelessness of individuals, households or groups of people and take immediate measures to address the situation.

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<sup>83</sup> *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*, UN Doc. A/HRC/31/54, para. 4, [documents-dds-ny.un.org/doc/UNDOC/GEN/G15/294/52/PDF/G1529452.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/294/52/PDF/G1529452.pdf?OpenElement)

<sup>84</sup> *Ibid.*, para. 80.

<sup>85</sup> *Ibid.*, para. 87.

<sup>86</sup> *Ibid.*, para. 88.

<sup>87</sup> ICESCR General Comment 3: The nature of the States parties obligations (Article 2(1)), para. 10, UN Doc. E/1991/23.

<sup>88</sup> The Goal No. 11 aspires to “make cities and human settlements inclusive, safe, resilient and sustainable”. One of the targets set under this Goal is to “ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums by 2030”. It is estimated that 7% of Nepal’s urban population lives in squatter settlements and only 30% of houses are safe to live in. One of the proposed targets of Nepal for 2030 is “doubling the proportion of households living in safe houses”. See, *Government of Nepal, National (Preliminary) Report on Sustainable Development Goals (2016-2030)*, p. ix, [www.undp.org/content/dam/nepal/docs/reports/SDG%20final%20report-nepal.pdf](https://www.undp.org/content/dam/nepal/docs/reports/SDG%20final%20report-nepal.pdf)

<sup>89</sup> As described by the Special Rapporteur, the structural causes include: (a) the retreat by all levels of government from social protection and social housing and the privatization of services, infrastructure, housing and public space; (b) the abandonment of the social function of land and housing; (c) the failure to address growing inequalities in income, wealth and access to land and property; (d) the adoption of fiscal and development policies that support deregulation and real estate speculation and prevent the development of affordable housing options; and (e), in the face of urbanization, the marginalization and mistreatment of those who are most precariously housed in informal settlements, living in temporary overcrowded structures, without access to water, sanitation or other basic services and living under the constant threat of eviction. See, *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*, UN Doc. A/HRC/31/54, para. 87, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/294/52/PDF/G1529452.pdf?OpenElement>



In view of the international human rights standards and the SDGs, the Special Rapporteur made a set of recommendations including to “recognize homeless people as a protected group in all relevant domestic legal frameworks”<sup>90</sup> and “commit to eliminating homelessness by 2030 or earlier in a manner that upholds international human rights and target 11.1 of the 2030 Agenda for Sustainable Development”.<sup>91</sup> As elaborated by the Special Rapporteur, the following are the immediate obligations of the state established under international human rights law: “a) to adopt and implement strategies to eliminate homelessness, with clear goals, targets and timelines; b) to eliminate the practice of forced eviction, especially where it will lead to homelessness; c) to combat and prohibit discrimination, stigma and negative stereotyping of homeless people in legislation; d) to ensure access to legal remedies for violations of rights, including for the failure of States to take positive measures to address homelessness; and e) to regulate third-party actors so that their actions are consistent with the elimination of homelessness and do not discriminate either directly or indirectly against homeless people.”<sup>92</sup>

### **Recommendation**

- *Amend the Act to include a provision that contains above-mentioned obligations towards addressing the problem of homelessness.*
- *Insert a provision to set up a mechanism responsible to regularly track the situation of homelessness, receive information about homeless people and respond to the situation.*
- *Specify measures that the state needs to take to address the housing needs and ensure the right to live a dignified life.*
- *Create statutory obligations of all tiers of the government to assess the underlying causes of homelessness within their respective jurisdiction and take measures to address such causes and eliminate the problem of homelessness.*

## **5.5. CLARITY ON RESPONSIBILITIES OF THREE TIERS OF GOVERNMENT**

As with the Right to Food and Food Sovereignty Act, 2018,<sup>93</sup> the Right to Housing Act also fails to clearly stipulate roles and responsibilities of all three tiers of government. The Act (for example, Section 3, 6, 7, 10 and 14) places a responsibility on all tiers (central, provincial and local) of government to put in place several measures including in terms of providing "housing facility" (used throughout the Act but not defined appropriately). As a matter of guiding principle, the reference to mutual co-ordination between three tiers of government is crucial.<sup>94</sup>

But, when it comes to obligations to tackle the problem of homelessness and structurally unsafe housing, there needs to be a clear set of obligations for each level of government. The Special Rapporteur on the right to housing has also recommended that “the responsibilities of all levels of governments should be clearly delineated and jointly coordinated with ongoing independent review and oversight in order to ensure that jurisdictional overlap does not deny those in need access to necessary services or housing. Assistance should be provided to those in need to ensure coordinated government responses.”<sup>95</sup>

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<sup>90</sup> Ibid, para. 91(f).

<sup>91</sup> Ibid, para. 91(a).

<sup>92</sup> Ibid, para 90.

<sup>93</sup> Amnesty International, Right to food in Nepal: Analysis of the Right to Food and Food Sovereignty Act 2018 (Index: ASA 31/0130/2019), p. 17.

<sup>94</sup> The Constitution of Nepal 2015, Article 56.

<sup>95</sup> Report of the Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, UN Doc. A/HRC/28/62, [www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A\\_HRC\\_28\\_62\\_ENG.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_62_ENG.doc)

It is also noticeable that there is an extensive delegation of power to the executive branch of the government to elaborate not only procedural aspects but also substantive aspects of the Act. Many Sections of the Act (for example, Section 7, 8, and 13) refer to “as prescribed [for in the regulation]” leaving substantive elements to the discretion of the government.

#### **Recommendation**

- *The Act should be amended to clarify the roles and responsibilities of each tier of government in terms of creating a conducive environment for enjoyment of the right to adequate housing by all.*
- *Amend the Act to provide statutory and substantive certainty entitlements that people can claim under the Act by reducing the margin of executive discretion.*
- *Insert an explicit provision to bring a clarity on what sort of facilities that the “housing facility” constitutes under this Act.*

## **5.6. RIGHT TO HOUSING ENTITLEMENTS**

It is important for the Housing Rights Act to contain a list of the statutory entitlements and the corresponding government obligations in view of the Constitution and the applicable international human rights standards. As specified by the CESCR, seven elements of the right to housing include “legal security of tenure”, “availability of services, materials, facilities and infrastructure”, “affordability”, “habitability”, “accessibility”, “location” and “cultural adequacy”.<sup>96</sup> Clarity on what actually can be claimed by an individual or a group is a foundation for the realization of any human right. As provided under Section 3 of the Act, every citizen is entitled to a) build, create, live and use own housing unit compliant with the standards set under the respective legislation; b) protection from risk attached to absence of housing; c) freedom to choose a housing site, move from there and manage housing in an appropriate site; d) protection of religious, social and cultural identity in the housing site; e) construct and protect housing infrastructures and preserve open space. Non-discrimination in terms of the housing is also guaranteed. There is also a generic guidance that all tiers of the government are obligated to respect, protect, promote and fulfil these rights.

With the exception of “protecting citizens from risk attached to absence of housing,”<sup>97</sup> Section 3 offers freedoms with respect to housing and fails to recognize all elements of the right to housing<sup>98</sup> established under international human rights law. In view of the international obligations, consideration should have been made to guarantee the following entitlements:

- Everyone shall be entitled to affordable and adequate housing.
- No one shall be subjected to forced eviction.
- Everyone is entitled to legal security of housing tenure.
- Right to have compensation and reparations against violation of the right to adequate housing.
- Everyone shall be protected against arbitrary deprivation from life-sustaining efforts.
- Individuals and households who are homeless and unable to provide basic shelter for themselves shall be entitled to be immediately accommodated in emergency or temporary housing facility.

#### **Recommendation**

- *Amend the Act to guarantee abovementioned list of entitlements concerning the right to housing in view of the constitutional and international human rights obligations.*

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<sup>96</sup> CESCR, General Comment 4, The right to adequate housing (Sixth session, 1991), UN Doc. E/1992/23, para. 8.

<sup>97</sup> Section 2(b).

<sup>98</sup> See above detailed discussion about the international human rights obligations (“3: Constitutional Promises”).

- *Insert a provision to require all three tiers of government to harmonize their policies and programmes in line with the guarantees under the Act.*

## 5.7. PROTECTION FROM FORCED EVICTION

Everyone is protected against forced eviction under international human rights law. In its General Comment 7, the CESCR stated that “legislation against forced evictions is an essential basis upon which to build a system of effective protection.” According to the CESCR, such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land; (b) conform to the Covenant; and (c) are designed to control strictly the circumstances under which evictions may be carried out. The legislation must also apply to all agents acting under the authority of the state or who are accountable to it.<sup>99</sup>

As provided under Section 5, “Any citizen may be removed from his/her habitat for a public purpose as per the prevalent law”. This does authorize the government to carry out eviction on grounds of public interest. This also goes beyond the language of the constitutional<sup>100</sup> guarantee against arbitrary encroachment on the right to property: “The State shall not, except for public interest, requisition, acquire, or otherwise create any encumbrance on, property of a person.” The provision under Section 5 of the Act therefore poses a risk of converting eviction as a rule rather than an exception.

The protection against forced eviction under Section 5(2) is completely ownership driven. The “right to be compensated” against the eviction and the right to have been provided with a “resettlement facility” are available only for those evicted from the housing facility built on “the land that they own”. This clearly excludes slum dwellers or those residing in informal settlements from the scope of legal protection. Application of the provision would have a disproportionate effect on those already marginalized in terms of access to land and housing such as Dalits, people living in poverty, Indigenous Peoples and other disadvantaged groups.

The conditions that are required to be fulfilled in carrying out eviction under this Act are also insufficient. As prescribed by the UN Basic Principles and Guidelines on Development-based Evictions and Displacement, “any eviction must be (a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare; (d) reasonable and proportional; (e) regulated so as to ensure full and fair compensation and rehabilitation; and (f) carried out in accordance with the present guidelines.”<sup>101</sup>

Section 5(4) of the Act makes any act of eviction subject to the following procedures: prior consultation with citizen, prior notification, prior identification of the individual and family to be evicted from their home, presence of authorized official or his/her representative in the time of eviction, no eviction of persons at night time and special attention to senior citizens, people with sickness, people with disabilities, children, people unable to protect themselves, physically challenged and pregnant women. There is no reference to important procedural guarantees including verification, access to a forum for appeal of the decision, availability of a choice to buy the inhabited public land and alternative housing for those who cannot provide for themselves and compensation. There is also an absence of a clear provision to require the compliance of “free, prior and informed consent” standard under ILO 169 in the context of eviction affecting Indigenous Peoples.<sup>102</sup> In

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<sup>99</sup> ICESCR, General Comment 7, The right to adequate housing (Article 11.1): forced evictions, 20/05/97, para. 9. Also See, Amnesty International, *Ending forced evictions in law and practice: A thematic submission to the United Nations Committee on economic, social and cultural rights* (Index: ACT 35/006/2013).

<sup>100</sup> Article 25(2) of the Constitution guarantees that “The State shall not, except for public interest, requisition, acquire, or otherwise create any encumbrance on, property of a person. Provided that this clause shall not apply to any property acquired by any person illicitly.”

<sup>101</sup> UN Doc A/HRC/4/18, Clause 21.

<sup>102</sup> Article 16.1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy. 2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned. 3. Whenever possible,

addition, a provision for providing compensation upon evicting people from their homes is also not appropriate. There should have been a clear provision requiring compensation to be awarded prior to evictions and giving adequate time to prepare for an alternative.

### **Recommendation**

- *Amend the Act to ensure that provisions in relation to eviction incorporate adequate procedural safeguards (for example, procedures for the giving of notice, procedures for consultation with the communities affected, procedures for access to a forum for appeal of the decision, and provisions for compensation for wrongful action).*
- *Amend the Act to ensure protection from forced eviction regardless of forms of the housing tenure.*
- *Insert a provision in the Act to require “free, prior and informed consent” in line with ILO 169 in terms of evictions affecting Indigenous Peoples.*
- *Amend the Act in line with international human rights standards on safeguards against forced evictions and ensure that no one is left homeless as a result of the eviction.*
- *Insert a provision to guarantee that all persons, groups and communities have the right to resettlement, which includes the right to alternative land of better or equal quality and housing that must satisfy all seven elements of adequate housing.*

## **5.8. HOUSING FACILITY AND RESETTLEMENT**

Section 7 of the Act entrusts the Government of Nepal, Provincial Government and Local Government with the responsibility to provide a housing facility to the homeless individuals and households on a priority basis.<sup>103</sup> It is noticeable that the obligation prescribed under this Section is of a generic nature. As this has been made subject to availability of resources and progressive realization, the minimum core obligation to immediately provide shelter to those in destitution and extreme poverty is missing.

Section 13 obligates all tiers of government to provide “temporary housing or financial support” to the individual and household displaced due to a natural disaster. They are obliged to carry out this responsibility through mutual co-ordination. The Act also provides that those living in temporary housing are resettled in the same location after normalization of the situation as appropriate. The Act fails to obligate the authorities to take measure to ensure full safety in the affected place.<sup>104</sup>

As provided under the Act, resettlement must be arranged for a displaced individual and family subject to the following conditions: a) if they do not own land elsewhere or if they own land, but such land is not appropriate to reside due to geographical or other reasons and b) if they are unable to manage any other shelter due to financial hardship. However, the Act makes those involved in any kind of income-generation activity<sup>105</sup> ineligible for resettlement. They are eligible only for concessional

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these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist. 4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees. 5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

<sup>103</sup> Section 7 of the Right to Housing Act 2018: Notwithstanding whatsoever is written in Chapter 2 of this Act, the Government of Nepal, provincial government or the local level shall, in mutual coordination, provide housing facility as prescribed gradually on the basis of a prioritization to the homeless individual and families based on available resources as follows: (a) Those who do not have house and land under one's or one's family ownership within the Nepal state or are unable to manage housing through one's or one's family income, source or effort, (b) Those who has been permanently displaced due to natural calamity and is in a condition as per Section (a)

<sup>104</sup> Ibid. Section 13(3).

<sup>105</sup> Ibid. Proviso of the Section 14(1)

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loans and partial grant to manage their resettlement. Simply an incident of involvement in any type of income-generating activity should not be taken as a basis to deny resettlement option.

It is also noticeable that the temporary housing and resettlement provisions are confined to those displaced due to natural disasters.<sup>106</sup> While it is important to prioritize victims of natural disasters, the Act should also have covered other situations (for example, internal conflict, crimes and violence based on discrimination according to gender, caste, sexual orientation etc.) where individuals and households need temporary or emergency housing assistance. Amnesty International therefore emphasizes that it should be a duty of the local government to respond to situations of all types of homelessness regardless of reasons.

In a number of cases, the Supreme Court has recognized the duty of the state to provide shelter to those in need. Responding to *Sudarshan Subedi v. Office of the Prime Minister and Council of Ministers*, the Supreme Court recognized that people with disabilities deserve to be specially treated by the state to enable them to live a life with dignity including through establishment of a residential house to accommodate the needy. The government was directed to identify those in need of residence and operate residential homes.<sup>107</sup> In another case, *Raju Prasad Chapagai for JuRI-Nepal v. Government of Nepal*,<sup>108</sup> the Supreme Court directed the government to take responsibility to feed and accommodate those living in destitution referring to the obligations under ICESCR. The Court also held that those in need of immediate assistance of food and shelter must be given first priority in implementing the fundamental rights through law and programmes.<sup>109</sup>

### **Recommendation**

- *Amend the Act to obligate local government to provide temporary housing to all individuals and households in need of such facility regardless of reasons for homelessness.*
- *Amend the Act so as not to deny temporary housing and resettlement scheme to anyone simply on the basis that he or she is involved in any income-generation activities for sustaining their life.*
- *Amend the Act to create an immediate obligation for the government to house people who are destitute and those in need of social protection (for example, providing the emergency accommodation facility).*
- *Consideration should be given to the Supreme Court's rulings on social justice handed down in response to public interest cases (for example, *Raju Chapagai et. al.* and *Sudarshan Subedi et. al.*) in formulating law and regulation concerning the right to housing.*

## **5.9. FINANCIAL FACILITY**

Section 8 of the Act provides for a financial facility to enable homeless individuals and households to build their own house.<sup>110</sup> If the individuals and households were unable to arrange their housing “with the financial support provided under this section”, it is required by the Act that a housing facility is provided to “ultra-poor”, “homeless individuals and families” on a priority basis. However, there is no

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<sup>106</sup> Ibid. Section 13.

<sup>107</sup> Supreme Court, *Sudarshan Subedi and Others v. Government of Nepal*, Office of the Prime Minister and Council of Ministers (NKP, 2069, No. 5, p. 830).

<sup>108</sup> *Raju Prasad Chapagai for Justice and Rights Institute-Nepal (JuRI-Nepal) v. Government of Nepal, Office of the Prime Minister and Council of Ministers and others*, decision dated 8 June 2016, Writ Petition No 071-WO-0257, (NKP, 2074, No. 4, p. 831).

<sup>109</sup> Ibid. See, paras 3 & 21.

<sup>110</sup> Section 8. Financial facility to be provided: (1) Financial facility in concessional rate shall be provided as prescribed to provide housing facility to the homeless individual and families as per Clause 7. (2) Housing facility shall be provided as prescribed on the basis of priority to the ultra-poor and the homeless individual and families who are unable to manage housing and alternative measure with the facility as per Sub-clause 1.

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provision to provide support to those living in inadequate housing. Similarly, the offering of housing facilities only after failure of building a house with the financial facility provided by the government is not in line with the international human rights standards. It is the immediate obligation of the government to prevent homelessness and accommodate homeless people.

In addition to providing direct financial support on an individual basis, consideration can also be given to arrange for providing financial support to all options including private initiatives to promote access to housing by marginalized and disadvantaged groups.

#### ***Recommendation***

- *Amend the Act to obligate the government to immediately provide accommodation to homeless people including those in destitution in temporary or emergency housing facility unless and until a permanent housing facility is provided or created with the financial support from the government.*
- *Amend the Act to insert a provision for providing financial support to all options including initiatives by the community or private sector to promote access to housing by marginalized and disadvantaged groups.*
- *Amend the Act to obligate the government to provide appropriate financial and technical support to those living in inadequate or unsafe housing.*

## **5.10. IDENTIFICATION OF PRIORITY HOUSEHOLDS**

Identification of homeless and those at the risk of homelessness is critical for the realization of the right to housing. The Act obligates local governments to collect details about households and individuals who are eligible to obtain housing facility. To do this, the Government of Nepal (Section 9) and Provincial Government (Section 11) must provide financial and technical support to local governments. As a matter of progressive realization, the government should categorize people on a fair, just and reasonable basis for providing housing facilities.

However, there should have been a statutory guidance to prioritize those in need of special attention in view of the Constitution<sup>111</sup> and international human rights standards.

As a precondition to receiving the housing facility, Section 12 requires beneficiaries to declare voluntarily that “he/she doesn’t own any land, housing or both in any part of the country, and is unable through one’s or one’s family income, source or effort to manage housing as such”. However, in some cases, including where the person concerned may be suffering from mental or physical ill health or may be located in a geographically remote area, it may not be possible for such people to come forward to seek government intervention. Therefore, there should have also been an explicit duty to proactively identify homeless people or those at risk of homelessness or those living in unsafe housing and respond their problems.

#### ***Recommendation***

- *In addition to requiring the homeless individual and household to come forward and declare their situation with the housing authority, the Act should be amended to obligate authorities to proactively identify those in need of housing facility.*

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<sup>111</sup> Articles 42 (Social justice), 18 (right to equality), 51 (policies of the State).

## 5.11. JOINT OWNERSHIP

Although there is a reference (Section 15(1)) to joint ownership over the housing facility provided or constructed with the support from the government under this Act, Section 15 does not contain any explicit statutory requirement to ensure joint ownership of husband and wife over such housing facility.<sup>112</sup> To address inequalities between men and women in terms of land and housing, the Act should have contained a mandatory clause to require joint ownership where applicable. A provision to encourage joint land ownership of husband and wife, in terms of the land distributed by the government, is considered to have diminished gender inequality.<sup>113</sup> Amnesty International encourages the Government of Nepal to replicate such provision in the housing sector as well.

### *Recommendation*

- *Amend the Act to provide for a joint ownership of husband and wife over the housing facility provided by the government.*
- *Separate provision (for example, waiver of registration fees) can also be inserted to encourage the conversion of single ownership over land and housing into a joint one.*

## 5.12. LEGAL SECURITY OF RENTAL AND INFORMAL TENURE

Legal “Security of tenure” provides a degree of protection for settlers and dwellers against infringement of their human rights or unjust, unreasonable and arbitrary eviction or disposition, or harassment. It is recognized under international human rights law as an essential component of the right to adequate housing. General Comment 4, states: “all persons should possess a degree of security of tenure which guarantees legal protection against forced evictions, harassment and other threats.”<sup>114</sup> The State parties to the ICESCR have been called upon to “take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection” and to do so “in genuine consultation with affected persons and groups.”<sup>115</sup> However, the Act does not contain any provision to guarantee legal security of housing tenure to those residing in informal settlements and rental housing. In the absence of legal protection, evicted residents of informal settlements were deprived of their right to housing including becoming victims of forced eviction in the past. For example, in May 2012, authorities forcibly evicted informal settlers along the Bagmati River in Kathmandu to implement a planned urban development project which resulted in destruction of 257 homes and homelessness of 844 people including 401 children.<sup>116</sup>

### *Recommendation*

- *Amend the Act to recognize, formalize and regularize rental accommodation and informal housing tenure.*
- *Amend the Act to include a provision that residences regardless of their forms are inviolable and shall not be searched or entered without due process of law.*

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<sup>112</sup> Section 15(1) reads: “The housing constructed and provided by the Government of Nepal, provincial government or local level as per this Act to the citizens shall be provided to ensure single, collective or joint ownership of the individual, family or community receiving such housing facility.”

<sup>113</sup> <https://sheland.org/2017/07/29/joint-ownership-of-land-strengthening-womens-land-rights-in-nepal/>

<sup>114</sup> CESCR, General Comment 4, The right to adequate housing (Sixth session, 1991), UN Doc. E/1992/23, para. 8(a).

<sup>115</sup> Ibid.

<sup>116</sup> Human Rights Watch, *Nepal: Halt evictions in Kathmandu – rights of disenfranchised at risk as homes are destroyed*, 10 May 2012, [www.hrw.org/news/2012/05/10/nepal-halt-evictions-kathmandu](http://www.hrw.org/news/2012/05/10/nepal-halt-evictions-kathmandu)

- *Amend the Act to include a provision providing protection from arbitrary termination of rental contract, overcharging and requiring to adequately compensate against forced eviction, intimidation or harassment of a tenant.*

## 5.13. RESTRICTIONS ON SALE AND TRANSFER OF HOUSES

Section 15(3) provides that those individuals and households who received the housing facility under this Act must reside in such housing facility.<sup>117</sup> Similarly, Section 15(5) prohibits the use of such housing facility to acquire a loan or leasing out, renting or selling out such facility or transferring the ownership to others by any other way.<sup>118</sup> Any act carried out against the stated provision is automatically null and void. However, the Act allows for partition of such property among the coparceners or transfer of the ownership to any of the co-owners.

While it is legitimate to provide for ensuring that the housing facility is properly utilized, the stated provisions go beyond the legitimate purpose of the Act as these place a restriction on freedom of movement, choice of residence and the right to property. It is also not legitimate to restrict transfer of ownership rights beyond the coparceners.<sup>119</sup> The Act should have served the legitimate purpose such as proper utilization of the housing as a property and get the most out of it for enhancing the standard of living of the recipient household. It is also important to make sure that any such legislative measures should not contravene the purpose of Article 18(3) of the Constitution (for example, the protection, empowerment and development of vulnerable groups). To prevent a misuse of housing facility provided by the government, there might also be other ways. Transfer of ownership or mortgage or leasing out the land provided under this Act may be made subject to special procedures for a specified period of time to ensure that the purpose of the transaction was legitimate or in the interest of the recipient of the housing facility.

### *Recommendation*

- *Revisit the gamut of Section 15 in view of the right to property, freedom of movement, freedom of choice of residence in terms of imposing restriction on use and capitalize the housing facility with the purpose of enhancing the standard of living of the household.*

## 5.14. ELIGIBILITY TO RECEIVE HOUSING FACILITIES

Section 17(1) creates an exception in terms of providing housing facility from the government. It renders certain individuals and households ineligible to get such housing facility from the Government of Nepal, provincial government and local government. The ineligible categories are the following:

- a person employed in civil service or retired from it, or any family member of such person;
- a person who draws salary or any other facility from any domestic or foreign company, organized institutions, cooperatives or firms and any member of his/her family;

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<sup>117</sup> Section 15(3) reads: "In case housing facility is provided with single ownership to any individual and family, then the same individual and family with the ownership must reside in such housing."

<sup>118</sup> Section 15(5) reads: "The housing provided with single, collective or joint ownership of any individual and family as per Sub-clause (2), (3) and (4) can't be used to keep it as a collateral to acquire loan from any bank or financial institution, to sell it, rent or lease it out, or to handover ownership to others or to abandon right by any other means without the prior approval of the Government of Nepal or provincial government or local government."

<sup>119</sup> Article 17 (right to freedom) & Article 25 (right to property).



- a person who draws salary or any kind of financial facility from national and international non-government organizations;
- a person involved in business, entrepreneurship or other financial income generation activities in the private sector and any family member of such person;
- a person employed in foreign governments or international organizations or draws pension or other financial facility from such organizations or any family member of such person;
- a person who holds residential permit of a foreign country or living permanently in a foreign country and any family member of such person;
- an individual who has rented to others his/her house, land or apartment;
- a person who does not own a house but possess movable or immovable property that is above the ceiling fixed by the government of Nepal;
- and other persons and their families as prescribed. "

Such a legislative ban on granting the housing facility based on the stated grounds is exclusionary. By application of this provision, even those who are engaged in different life-sustaining activities (for example, small business, part-time job, employed on daily wage) would also be excluded from taking benefit of the state-sponsored housing scheme.

Rather than the current criteria, where there is a risk that people to whom these are applicable may still not be able to provide adequate housing for themselves and their families, the criteria should be based on household income and whether this is sufficient for them to access adequate housing. Consideration should have been given to the fact that those whose income is insufficient to feed themselves and their family members become unable to arrange proper housing facility. There should have been a provision that sets objective criteria such as a ceiling of monthly or annual income and necessity of the housing facility for a person and family given the situation. It is therefore important to revisit the stated criteria and enhance the coverage of the government-sponsored housing facility.

#### **Recommendation**

- *Amend the Act to provide for objective eligibility criteria in such a way that those engaged in life-sustaining activities (for example, small business, part-time job, seasonal employment, employed on daily wage basis) would also be able to claim the housing facility from the government.*

## **5.15. CRIME AND PUNISHMENT**

Acts criminalized under Section 25 are the following: a) acquiring housing facility by submitting fake details; b) misusing the housing facility or using the housing for purposes other than housing; c) intentionally collecting false details and making nomination for housing based on that; and d) carrying out violation of Section 15(5). It is prohibited under Section 15(5) "to keep the housing facility as a collateral to acquire loan, to sell it or rent it out or to transfer ownership to others or to abandon the right by any other means without prior approval of the respective government."

It is fair to penalize the act of providing fake details deliberately to get housing facility and nominating someone for housing facility knowing the fact that the details provided were false. But, the criminalization of acts such as using the housing facility for the purpose other than residence is problematic. If the housing facility is used for a legitimate purpose such as generating capital out of that facility, not only should this be allowed but also such an initiative deserves to be facilitated.

On the other hand, the Act fails to incorporate a provision of accountability against the acts that render someone homeless including through forced eviction and harassment of the tenant or occupant by landlord. Similarly, in view of the prevailing discriminatory practice against Dalits, people

living with HIV, and sexual minorities in relation to rental housing, the Act should also have incorporated measures to tackle discrimination.

#### **Recommendation**

- *Amend the Act to permit use of the housing facility for legitimate purpose such as generating capital through keeping it as a collateral to acquire loan using the facility for business activities.*
- *Amend the Act to provide for holding authorities to account for forced evictions.*
- *Insert a provision criminalizing acts that discriminates, intimidates, or harass homeless persons or deprive them from their life-sustaining efforts.*
- *Insert a provision that provides protection against discriminatory practices that impair access to housing by special categories of the population such as Dalits, people living with HIV, sexual minorities and other marginalized groups.*

## **5.16. REVOCATION OF OWNERSHIP**

Section 26 provides for revocation of the ownership of the housing facility provided by the government under this Act. The housing facility is revoked and the ownership is transferred to the respective government if the recipient of such facility did not reside in such facility for more than three years and used such facility, violating the conditions set forth under Section 26(b).<sup>120</sup> It is unfair for the Act to assume that every instance of non-living in the residence provided by the government would be for an ulterior motive. Rather, there should have been a provision to require the respective authority to consider the reasons behind non-residence. There should also have been a process to appeal against any decision to revoke the facility.

#### **Recommendation**

- *Amend the Act to remove the provision providing for revocation of the housing facility simply because the recipient did not reside in the facility for three years.*
- *Rather, insert a provision that requires the authority to assess the reasons behind not using that facility for the purpose of a persons own residence and hold the recipient accountable.*

## **5.17. COSTS FOR MAINTENANCE AND AMENITIES**

As provided under the Act, maintenance costs of the housing facility provided pursuant to this Act is borne by the recipient of such facility.<sup>121</sup> No obligation is placed on the government to cover maintenance costs.

Similarly, unless determined to be free of costs, the individual or households who receive the housing facilities are obligated to bear the costs for power, drinking water and other facilities. As provided under ICESCR, housing is not considered adequate if its occupants do not have safe drinking water, adequate sanitation, energy for cooking, heating and lighting, sanitation and washing facilities, means

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<sup>120</sup> Section 26 reads: "In case of a circumstance as follows in addition to the condition mentioned in Sub-clause (6) of Clause 15, the housing provided as per this Act shall be transferred from the ownership of such individual and families to the name of the Government of Nepal, provincial government or local level providing such housing facility: (a) If the individual and family who have been provided with the housing does not living in the housing or does not use it for three or more years continuously, (b) Other conditions as prescribed."

<sup>121</sup> The Right to Housing Act 2018, Section 27(1).

of food storage, refuse disposal, etc.<sup>122</sup> It does not necessarily mean that the government is obligated to provide these facilities free of cost to everyone. However, where they are unable to pay such costs, they should be supported to ensure their access to such facilities either through subsidies or direct financial aid.

It is therefore unjust to exclusively require the recipient of the housing facility to bear maintenance costs. Similarly, the Act should have obligated the government to cover utility costs including for power, drinking water, sanitation and other facilities based on the needs assessment.

#### ***Recommendation***

- *Amend the Act to create an obligation of the respective government to cover the costs for maintenance and utilities including power and drinking water of the housing facility provided to the individual or household in need of such facility based on the needs assessment.*

## **5.18. CONSULTATION IN FORMULATING RULES, PROCEDURES AND GUIDELINES**

Under Section 30, the Government of Nepal is empowered to frame rules necessary to implement the Act. Similarly, Section 31 empowers all tiers of government to formulate procedures and guidelines necessary to implement the Act. However, the Act fails to require the respective government to consult the stakeholders when formulating such rules, procedures and guidelines. Such an absence of the legislative guidance should not be used as a pretext to bypass the responsibility to consult with the stakeholders as broad-based participation of citizens in formulating and enacting laws and public policy is a human right norm incorporated in the International Covenant on Civil and Political Rights (ICCPR) to which Nepal is a party.<sup>123</sup> While considering a legal and policy measure with implication for Indigenous Peoples, consultation and participation is also a part of the state obligation under ILO 169.<sup>124</sup>

#### ***Recommendation***

- *Amnesty International therefore recommends that the authorities should adequately consult with the stakeholders before introducing any bill in the parliament or enacting rules, procedures and guidelines necessary to strengthen legal protection or effectively implement the Act.*

## **5.19. COMPENSATION AND REPARATIONS**

Except in relation to eviction, the Act does not provide for compensating the victim of the violations of the right to housing-related guarantees. There is a gap in terms of receiving a complaint, inquiring into such complaints, evaluating the damage and awarding adequate compensation.

The Act should have contained a provision to compensate the victims for suffering any damages due to the violations of the guarantees under the Act and set criteria or standards for determining the quantum of compensation. In addition to compensation, other forms of reparations including restitution and rehabilitation should also have been provided under the Act.

#### ***Recommendation***

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<sup>122</sup> CESCR General Comment 4: The Right to adequate housing (Article 11(1) of the Covenant) adopted at the Sixth Session of the CESCR, UN Doc. E/1992/23, para. 8(b).

<sup>123</sup> ICCPR, Article 25.

<sup>124</sup> Article 6 of ILO 169 includes a broad requirement to consult with Indigenous Peoples whenever legislative or administrative measures affect them directly.

- *Amend the Act to insert a provision that recognizes the right to adequate reparations including compensation and specify the mechanism responsible for inquiring into and assessing damage due to a violation of the right to housing.*
- *Amend the Act to clarify the criteria applicable in determining the compensation.*

## 5.20. NODAL MECHANISM

Recognition of rights under the Constitution and in law is the first step towards the realization of the rights. To ensure realization of the right to adequate housing, a powerful nodal agency such as an independent housing council is desirable. Unlike the Right to Food and Food Sovereignty Act,<sup>125</sup> the Right to Housing Act does not contain any provision to create a nodal mechanism responsible to advise on important policy matters (for example, regulation of costs of the housing materials, development of indicators, preparation of a strategy and plan to eliminate homelessness, creation of an emergency fund to support homeless people, standards governing resettlements, setting eviction procedures and guidelines, harmonization of national laws and policies with the international human rights standards) in relation to housing and monitor the implementation of the Act. The Act should have provided for creation of a nodal mechanism with clear powers and functions to monitor the implementation of the Act at central, provincial and local level and provide necessary feedback and advice to the concerned authorities.

### *Recommendation*

- *Insert a provision in the Act to provide for formation of the national, provincial and local-level nodal mechanisms with stipulation of their clear functions, powers and responsibilities to provide policy advice and track the implementation of the Act.*

## 5.21. MECHANISM TO HANDLE GRIEVANCES

Prompt administrative remedies including through statutorily mandated grievance redressal mechanisms is an important element for the realization of the right to adequate housing through maintaining transparency and accountability amongst the government agencies. Such a mechanism can be entrusted with the responsibilities to receive and process grievances from any aggrieved individual, household or group.<sup>126</sup> Emphasizing the importance of administrative remedies, the Special Rapporteur stated that, “Statutory and administrative remedies often engage important components of the right to adequate housing and they are of particular importance at the local and subnational levels – the levels at which housing programmes are administered and where rights holders usually first seek effective resolutions. It is particularly important that administrative remedies be timely and effective in relation to housing, since the most fundamental interests are often at stake.”<sup>127</sup>

However, the Act does not provide for any mechanism to handle grievances where rights-holders or stakeholders feel that duties are not carried out or entitlements are not provided in accordance with

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<sup>125</sup> The Right to Food and Food Sovereignty Act (Sections 32, 34 and 36) provides for the creation of food council at national and provincial level and a food co-ordination committee at local level.

<sup>126</sup> Examples of such local mechanisms include local or national ombuds offices; city level human rights commissions, such as in Bosnia and Herzegovina; national and state/provincial level human rights commissions with jurisdiction over subnational level governments; and elected people’s councils at the municipal level to address human rights complaints. The establishment of local human rights mechanisms provides a vehicle through which the right to adequate housing might be protected. For example, in Portugal, the Ombudsman has received an increasing number of housing related complaints and has directly encouraged a municipality to refrain from undertaking evictions and demolitions and to monitor the situation.

<sup>127</sup> 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, UN Doc. A/HRC/28/62, para 42.

the law. This could be an independent administrative complaints mechanism, which provides quick remedies to the complainants and should be exhausted before one seeks judicial remedies. Such grievance redressal officers should be appointed through a transparent process. There could be a quasi-judicial mechanism with the possibility of entrusting the National Human Rights Commission to monitor the implementation of the law and providing recommendations to the government at all levels.

***Recommendation***

- *Amend the Act to create a separate administrative or quasi-judicial mechanism responsible to handle grievances where rights-holders or stakeholders feel that duties are not carried out or entitlements are not provided, or application of legal provision is discriminatory.*

# 6. CONCLUSION

It is encouraging to note that Nepal has secured a constitutional guarantee of the right to housing as a fundamental right.<sup>128</sup> The enactment of legislation setting normative standards necessary to put this guarantee into practice also signifies further progression in this regard. Amnesty International takes this development as a step forward in making the right to housing a reality for everyone in the country.

With a few exceptions (for example, identification of priority households, a provision of housing and financial facility for those in need of housing), the statutory framework that the Right to Housing Act offers is found inadequate in many respects. While numerous provisions in the Act are inconsistent with international human rights law, other provisions required by the human rights standards are absent.

From an overall perspective, the scope of the Act as such is found narrowly focused to providing housing and financial facility to those in need of housing. Though adequate housing is not only about owning a house but having access to a house with security of tenure, the government's approach to housing in this Act is primarily oriented towards an ownership-based model. The absence of necessary provisions on rental housing in the Act is a glaring gap.

Unlike Nepal's international human rights obligations, the legal protection under this Act is not available for non-citizens as it is explicitly confined to "citizens" only. Definitions of key terms, such as homelessness, security of tenure, affordability and adequacy of housing in line with the international human rights standards are absent in the Act. The Act enlists statutory guarantees concerning the right to housing but it fails to include a formulation such as the right of everyone to have adequate housing that satisfies all seven elements: "legal security of tenure", "availability of services, materials, facilities and infrastructure", "affordability", "habitability", "accessibility", "location" and "cultural adequacy".

While the stipulation of responsibilities in relation to providing housing facility on a priority basis is welcome, no concrete measures are required by the Act to prevent homelessness including through addressing the underlying causes of homelessness. The criteria set to identify the individual and households in need of housing facility are also not just, fair and reasonable. Many of the provisions appear positive but they are not human rights compliant. Though there are provisions under the Constitution (Article 37(2)) and the Act (Section 5) to protect against forced eviction, they are ownership driven; slum dwellers or those living in informal settlements do not fall under the arena of legal protection against forced eviction. Statutory and procedural safeguards against forced eviction are also not fully in line with the international standards. No legal protection of security of rental and informal tenure is provided. Except in the context of eviction, there is no provision for compensatory remedy.

There is also no reference to those (for example, Dalits, Indigenous nationalities, groups on the verge of extinction, ex-kamaiyas, ex-haliya) who are already prioritized by the Constitution in terms of housing as well as other social justice elements. No nodal mechanism is envisioned to provide advice to the authorities on housing issues and monitor on a regular basis the implementation of the Act.

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<sup>128</sup> See above detailed discussion of the constitutional framework on the right to housing ("3. Constitutional Promises").

The Act does not have any guidance about the plan, strategy and financial resources to secure the goal of eliminating homelessness by 2030 and realization of the right to adequate housing for all. Although there are references to all three tiers of government under the Act, there is no clarity on who is mandated to undertake different responsibilities.

The Government of Nepal therefore should thoroughly review the Act and take prompt steps to address the stated shortcomings by introducing a bill to amend the Right to Housing Act. While prioritizing the amendment of the Act, the government should also formulate necessary rules and regulations to effectively carry out several responsibilities including the identification of priority households, assessing the vulnerability of homelessness and according them with the housing facilities in meaningful consultations with the stakeholders. The Government in partnership with National Human Rights Institutions (NHRIs) and civil society organizations should also raise awareness on the provisions of Act and the relevant constitutional and international human rights standards governing the right to adequate housing. The Right to Housing Act would be strengthened by:

- *Widening the scope of the Act to address underlying causes of homelessness and create a conducive environment for enjoyment of the right to housing by all.*
- *Expanding the scope of the legal protection to non-citizens.*
- *Defining key terms including “homelessness”, “security of tenure”, “affordability of housing” and “adequacy of housing”.*
- *Obligating the authorities to address the problem of homelessness including through setting up a mechanism responsible to regularly track the situation of homelessness and respond to the situation.*
- *Specifying the measures that the state needs to take to immediately to address housing needs.*
- *Obligating all tiers of the government to assess the underlying causes of homelessness and take necessary measures.*
- *Bringing a clarity on the roles and responsibilities of each tier of government.*
- *Providing statutory certainty of substantive entitlements to the right to housing.*
- *Requiring all three tiers of government to harmonize their policies and programmes in line with the guarantees under the Act.*
- *Rectifying Article 37(2) of the Constitution would result in a licence for the authorities to forcibly evict slum dwellers or informal settlers either through judicial interpretation or constitutional amendment.*
- *Ensuring that provisions in relation to eviction incorporate adequate procedural safeguards.*
- *Ensuring protection from forced eviction regardless of forms of the housing tenures.*
- *Requiring “free, prior and informed consent” in line with ILO 169 in terms of evictions affecting Indigenous Peoples.*
- *Obligating local government to provide temporary housing to those in need of such facility.*
- *Ensuring that the involvement in any income-generation activities for sustaining their life would not be a condition to withdraw ownership of the housing provided by the Government under this Act.*
- *Creating an immediate obligation to house destitute people and those in need of social protection.*
- *Providing for immediate obligation to accommodate homeless people in temporary or emergency housing facility.*

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- *Obligating authorities to proactively identify those in need of housing facility.*
- *Providing for a joint ownership of husband and wife over the housing facility provided by the government.*
- *Regularizing and providing legal recognition of rental accommodation and informal housing tenure.*
- *Ensuring inviolability of residences regardless of forms of housing tenure.*
- *Providing protection from arbitrary termination of rental contract and overcharging*
- *Requiring to adequately compensate against forced eviction, intimidation or harassment of a tenant.*
- *Removing a restriction to use and capitalize the housing facility provided by the government.*
- *Setting eligibility criteria in such a way that those engaged in life-sustaining activities would also be able to claim the housing facility from the government.*
- *Permitting use of the housing facility for legitimate purposes such as generating capital through keeping it as a collateral to acquire loan for business activities.*
- *Providing for holding authorities to account for forced evictions.*
- *Criminalizing acts that discriminate, intimidate or harass homeless persons or deprive them of their life-sustaining efforts.*
- *Providing measures that protect from discriminatory practices that impair access to housing by special categories of the population such as Dalits, people living with HIV, sexual minorities and other marginalized groups.*
- *Removing the provision providing for revocation of the housing facility simply because the recipient did not reside in the facility for three years.*
- *Creating an obligation to cover the costs for maintenance and utilities based on the needs assessment.*



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# ADEQUATE HOUSING FOR ALL

## COMMENTS AND RECOMMENDATIONS FOR STRENGTHENING THE RIGHT TO HOUSING ACT 2018

Amnesty International calls on the Government of Nepal to strengthen its new legislation on the right to housing and keep its promise to prevent homelessness and ensure safe and adequate housing for all. The briefing identifies numerous flaws in the 2018 Right to housing law and offers a set of recommendations to bring it in line with the country's international human rights obligations.

As this briefing points out, the current law needs to be amended to address the underlying causes of homelessness and ensure adequate safeguards against forced evictions of people from the home and land they occupy. Currently, the law only protects those residing in the house built on "the land that they own" contrary to international human rights law and standards.

The briefing also stresses the need to clearly lay down specific duties for each level of government in terms of addressing the problems of homelessness at individual, household or a community level.

The government is also urged to ensure the law supports marginalized communities, such as people living poverty, those living in informal settlements, Dalits and land- dependent indigenous peoples, including Tharu.