

Legal Guide for the Protection of Venezuelan Refugees and Migrants against Forced Evictions

February 2021



The Regional Protection Sector would especially like to thank the Regional Legal Team (Elisa Guzman and Laura Tatiana Rodríguez in Colombia, Juan Rivadeneira and Felipe Asanza in Ecuador, Mariana Mendiola in Peru, Sandra Flores in the Caribbean sub-region, Thais Morales in the Dominican Republic, Andre de Lima Madureira and Vivianne Soares in Brazil) for their contributions during the process of preparing this guide that provided a more in-depth identification of typologies, as well as legal precision for the interpretation of alternatives and procedures. We would also like to thank the Public Defender Office of Bogota, the Ombudsman's Offices in Ecuador and Colombia and the Public Defender's Offices in Ecuador and Brazil. Through sessions we held, staff from these entities helped us to strengthen the identification of legal gaps and available alternatives to improve the response for the mitigation of the risks and impacts of evictions of refugees and migrants from Venezuela.

Document developed by the Protection Sector of the Regional Interagency Coordination Platform for Refugees and Migrants of Venezuela (R4V).

The Regional Protection Sector is led by HIAS and the United Nations High Commissioner for Refugees (UNHCR). It consists of 106 organizations (non-governmental organizations, United Nations agencies and civil society organizations) that have a presence in 4 countries (Colombia, Ecuador, Brazil, Peru) and 3 sub-regions (Caribbean, Central America and Southern Cone).

Senior Regional Consultant:

Juan Carlos Betancur

For more information:

Juan Carlos Pacheco /HIAS/Sector Co-lead. regionalprotectionsector.hias@outlook.com

Lorena Nieto/UNHCR/ Sector Co-lead. nieto@unhcr.org

This document is part of the Regional Toolbox for the mitigation of eviction risks developed by the Protection Sector of the Regional Platform within the framework of the 2020 Work Plan. This document was jointly developed with regional organizations and national protection sectors.



Legal Guide for the Protection of Venezuelan Refugees and Migrants against Forced Evictions

February 2021

Content

Presentation	3
1. The right of refugees and migrants to adequate housing enshrined in international frameworks	6
2. What is a forced eviction?	10
3. Differential approaches and the right to adequate housing. Legal instruments in the context of forced evictions	14
A. Intersectionality	15
B. Refugees and migrants	16
C. Gender approach	18
D. Children and adolescents approach	20
E. Ethnic approach	22
F. People living with disabilities approach	24
G. Older persons approach	24
H. People with critical health conditions	26
4. Right to adequate housing for Venezuelan refugees and migrants according to their housing tenure profile	28
A. Rental of housing or land	29
B. Settlements in public spaces	34
C. Public and private shelters	36
D. Territories of indigenous peoples, afro-descendants and other peoples protected by the 169 ILO Convention	37
5. Inventory of key measures in the region for the mitigation of forced evictions	40
A. Characterizations of eviction or eviction risk	41
B. Legal elements to strengthen mediation processes between individuals and between individuals and the State	44
C. Design and follow-up of plans agreed upon between authorities and communities in eviction situations	47
D. Actions in the Inter-American Human Rights System and the United Nations Organization	50
6. Final recommendations on evictions in the context of the COVID-19 health crisis	54
Notes	57

Presentation

The right to adequate housing, despite having been recognized by multiple international instruments, continues to be a human right that is consistently violated. Around 20% of the world's population do not have adequate housing¹. In Latin America, informal settlements generally lack the conditions required to live a decent life, and local and national public policies fail to radically transform this situation.

It is in this precarious context that the mobility of millions of Venezuelan men and women in the region occurs, highlighting serious gaps in the enjoyment of economic, social and cultural rights in the countries where refugees and migrants arrive. As a result, their precarious situation is added to the difficulties faced by host communities or to become part of an informal housing and land market that does not guarantee adequate housing.



©IOM/ Jessica Fernandez

The right to adequate housing is a human right of all people, regardless of their migratory status, official documentation, gender, ethnic, age, etc. It is also a human right that serves as a basis for other fundamental rights necessary to guarantee human dignity, such as the right to health, water, education, privacy and others. During the COVID-19 health emergency, having adequate housing has become a necessary factor to ensure protection, and in many cases to survive. In the context of the pandemic, Resolution 1/2020 of the Inter-American Commission on Human Rights recommended that the States Parties immediately reinforce the implementation of the human rights approach by guaranteeing full compliance with inter-American and international human rights standards within the framework of their universality, interdependence, indivisibility and transversality, particularly economic, social, cultural and environmental rights (ESCR).

This Legal Guide, as part of the Regional Toolbox for the Mitigation of Eviction Risks, seeks to strengthen the technical capacity of the 104 partner organizations that form the Regional Protection Sector of the Platform for the response to refugees and migrants from Venezuela (hereinafter "R4V Platform"), who have been evicted and/or are at risk of eviction. This is achieved through the identification of housing tenure typologies in the region, existing alternatives for legal responses and mechanisms available for the defense of the right to adequate housing. This Legal Guide aims to strengthen the process of analysis and guidance for the population by identifying key actors involved in mechanisms that facilitate the reestablishment and protection of the rights to life, security, liberty and physical integrity for this population.



Each State in the region has its own institutions, public policies and legal frameworks that must be aligned with international human rights obligations. The Legal Guide benefited from the valuable contributions of staff working in the national protection sectors of Ecuador, Brazil, Peru, Colombia, Panama and the Caribbean Subregion, as well as the experiences of public officials from the Public Defenders and Ombudsmen's Offices in Ecuador and Brazil. These entities have strengthened their monitoring and guidance schemes for refugees and migrants who have faced increased violations of their right to adequate housing in the context of COVID-19.

The right to adequate housing, like all rights with economic, social and cultural content has a progressive nature and requires the full use of the "maximum available resources" of the entities in charge of local and national public policies. This right is related to the possibility of access to justice systems and effective remedies. It is a right that also implies immediate obligations of respect, protection and prevention based on civil and political human rights in which interdependence and indivisibility must be considered in relation to ESCER. This means that it is a human right, the fulfillment of which is subject to the implementation of specialized housing and land institutions, laws, local and national public policies and benefit programs and sometimes judicial decisions.

The State's obligation regarding the right to adequate housing can involve short, medium and, in many cases, long-term commitments. For this reason, and based on the scope of their missions, teams in the field must determine the duration of their intervention strategies. In the context of alliances with other organizations, it is important to define the role that each organization plays and what concrete actions they can contribute to the fulfillment of the right to adequate housing. Specifically, this Legal Guide contributes to:

- **Establish the rights of refugees and migrants in accordance with the international obligations of States in situations of risk of eviction, evictions in progress and post-eviction situations according to the type of housing tenure or shelters and special protection needs.**
- **Strengthen the capacity of humanitarian and other organizations to provide support with a differential approach to communities or families of refugees and migrants, victims or people at risk of forced eviction and strengthen the role of community organizations that provide support.**
- **Refer cases to the relevant authorities that require some type of support/intervention that exceeds the role of the R4V Platform/ Protection Sector and represent an increase in the level of exposure of the population to this risk.**
- **Identify strategic allies that, from a multisectoral approach, can contribute to the defense of the right to adequate housing.**

1. The right of refugees and migrants to adequate housing enshrined in international frameworks

Most of the States in the region in which the R4V Platform operates are party to international conventions, covenants, treaties or instruments that enshrine adequate housing as a human right² .



Article 21 of the 1951 Geneva Convention enshrines the right to housing for refugees. However, the International Covenant on Economic, Social and Cultural Rights (hereinafter the "ICESCR"), is the most important international instrument that establishes the current scope of the right to adequate housing. States must recognize "the right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions"³.

The UN Committee on Economic, Social and Cultural Rights (hereinafter referred to as the "Committee on ESC rights") is the entity mandated to interpret the scope of the ICESCR and to monitor its implementation by States parties. Authoritative interpretations of the ICESCR by the Committee on ESC rights are made through instruments called General Comments.

The Observations of the Committee on ESC rights have identified the following as the most important elements of the right to adequate housing and the obligations of States in guaranteeing it⁴:

Legal security of housing tenure. The Committee on Economic, Social and Cultural Rights recognizes that legal security of housing tenure must include all existing legal forms of tenure. Different forms of ownership can be found across the region, as well as different types of contracts and agreements regarding housing and land. For example, there is a wide range of forms of leasing, housing loan agreements, cooperative home ownership, emergency housing, tenures in informal settlements including land occupation, and different types of individual, collective and ethnic ownership. "Whatever the type of housing tenure, all people should enjoy some degree of security of tenure that guarantees them legal protection against eviction, and harassment or other threats."⁵.

The different types of agreements made by refugees and migrants from Venezuela in the region regarding the housing they occupy include a wide variety of contracts between private parties with either higher or lower levels of formality. In relation to all of these contracts, the ICESCR guarantees the prohibition of forced evictions. Although legal security is the focus of this Legal Guide, taking into account that it mainly refers to the rights of refugees and migrants, it is also necessary to consider the following elements to identify whether we are dealing with adequate housing and its enjoyment as a human right:

Some elements to be taken into account when considering whether a dwelling constitutes adequate housing

- a. Availability of material services, facilities and infrastructure.** Housing must contain certain services that are indispensable for health, safety, comfort, and nutrition.
- b. Bearable costs.** The costs involved in paying for housing should be at a level that does not prevent the attainment of other basic needs.
- c. Habitability.** Adequate housing provides protection from changes in climate and ensures the physical safety of the occupants.
- d. Affordability.** The elderly, children and adolescents, persons living with disabilities, the terminally ill and other persons with special needs, regardless of their differentiated condition, should be granted access to adequate resources to obtain housing.
- e. Location.** Adequate housing should allow access to employment options, health care services, child and adolescent care centers, schools, and other social services necessary for the family group.
- f. Cultural appropriateness.** The way in which housing is built, its construction materials and the policies that support them should allow for the expression of cultural identity and ethnic diversity, for example, of indigenous peoples and afro-descendants.

It should be taken into account that the right to adequate housing cannot be considered in isolation from the other human rights contained in the ICESCR⁶, such as the right to health or education; nor from the rights included in the Covenant on Civil and Political Rights, such as the right to freedom of expression (Art. 19), of association (Art. 22) and to choose one's residence (Art. 12); or the right to be free from arbitrary or illegal interference in one's private life, family or home, which are essential elements to guarantee the right to adequate housing.

It is important to emphasize that for this Legal Guide, the right to adequate housing depends on guaranteeing access to effective judicial mechanisms that recognize this as a human right. Three key aspects⁷ for access to justice on the right to adequate housing are:

- **Interpretation by the courts:** Justice systems must adjust domestic law to international human rights obligations because on the contrary, the State could be liable in terms of international responsibility. For example, when a court, tribunal or police inspectorate approves an eviction without ensuring adequate alternative housing and the right to food and health, this entity is violating international human rights standards.⁸



- **Administrative decisions:** There must always be the possibility of access to a justice system that is independent of governments and to an effective judicial remedy⁹. The right to access to justice will only be complete if the intervention of an independent judicial body is possible for cases of administrative decisions that deny the right to adequate housing.
- **Follow-up:** The justice apparatus, through its courts or tribunals, should have the jurisdiction to monitor compliance with its decisions. In constitutional matters in some countries in the region, judges retain jurisdiction until the full realization of human rights is guaranteed and victims may request their intervention at any time.



©NRC/ Nadège Mazars

2. What is a forced eviction?

The Committee on ESC rights defines forced eviction as "the removal of individuals, families and/or communities from the homes and/or lands they occupy, permanently or temporarily, without providing them with appropriate legal or other means of protection or access to them"¹⁰ .



The Committee on ESC rights establishes that the fundamental elements for determining a forced eviction are the following:



Fundamental elements for determining a forced eviction

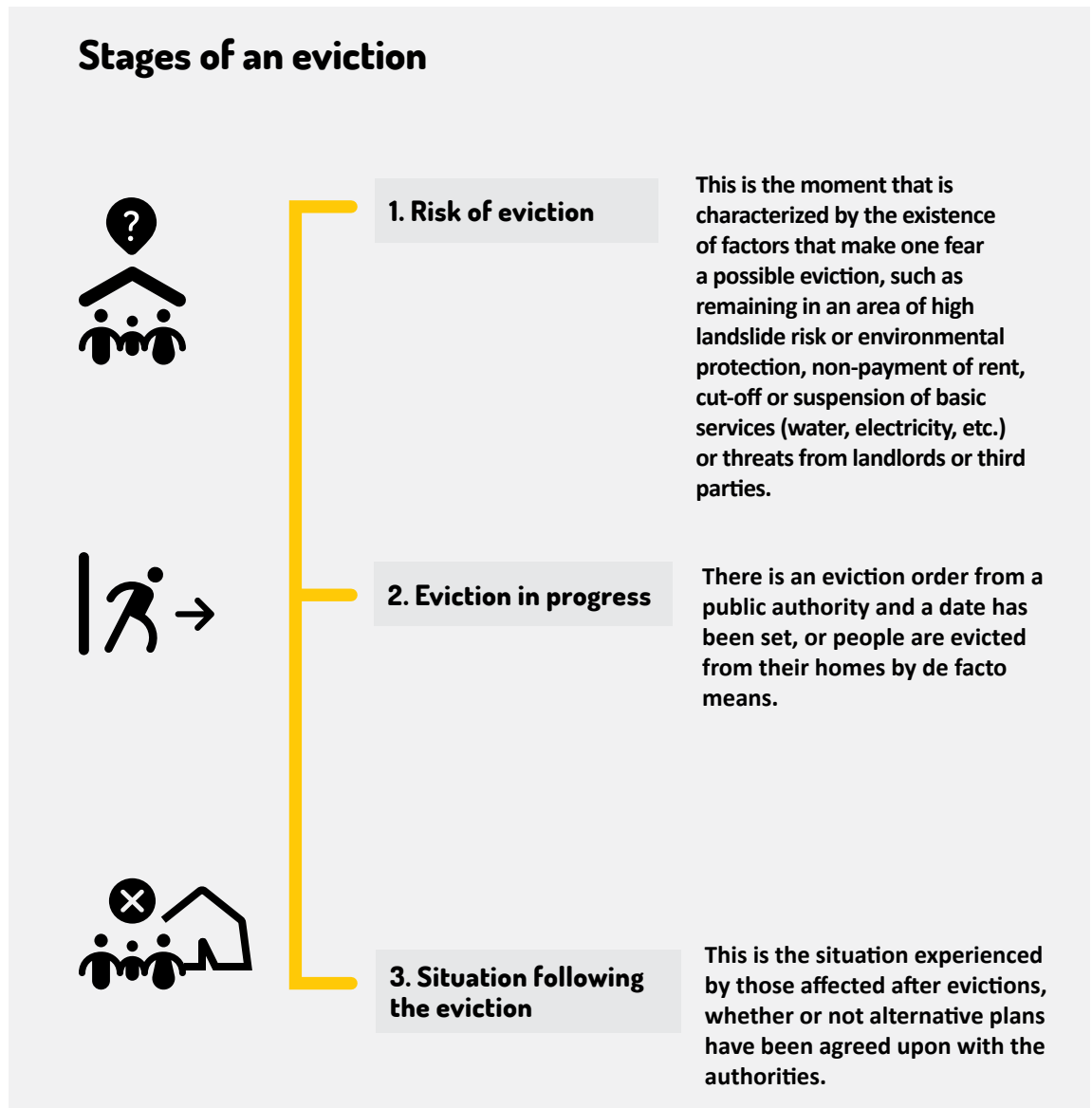
- a. Transfer, removal and expulsion of individuals, families or communities.** They are forced to leave the homes or lands they occupy, either having a legal title or lacking a title to support their case.
- b. Against their will,** either by means of violence, threats, de facto situations or arbitrary procedures.
- c. The eviction is carried out without legal protection** based on human rights standards, that guarantee, among others, access to justice, consultation mechanisms and alternative housing or land that avoid them being left in a situation of homelessness and in violation of other human rights.

Evictions are not prohibited in all cases; for example, when there are dwellings at risk of disaster due to unstable land, or when a civil judicial authority returns a property to the owner due to a breach of a private contract. Regarding the latter, countries such as Ecuador, Colombia, Chile, Peru and others provide administrative or judicial eviction proceedings for breach of contract by tenants in their domestic legislation. These procedures have different names depending on the country.

Although in these cases evictions are permitted, it should be kept in mind that even in these situations a forced eviction could be configured as a violation of the right to adequate housing if the process does not comply with international human rights obligations. For example, when it does not respect human rights standards such as due process. These may also involve other human rights violations if they are affected by threats, aggression, sexual violence or de facto actions, or when the landlord has not been allowed access to justice.

Eviction is different from dispossession. Eviction is the arbitrary or illegal deprivation of ownership or possession rights over land or housing, while dispossession does not imply ownership or possession of the land¹¹, only inhabiting it regardless of property rights with the purpose of accessing the human right to adequate housing, as in the case of refugees or migrants who are tenants or who use public land to build temporary housing.

Temporary housing can occur in different stages. Each stage marks specific dynamics and needs in terms of protecting people¹². Staff teams in the field must be able to determine which of these stages people or communities are in so that they can adapt their response:





3. Differential approaches and the right to adequate housing.

Legal instruments in the context of forced evictions.

This chapter takes stock of the main international obligations of States in relation to populations with special protection needs. One of the most important aspects for the defense of the right to adequate housing and the right to not be forcibly evicted is the identification of the rights of vulnerable populations and the disproportionate effects they suffer.



This chapter presents the legal instruments and recommendations made by international organizations for each differential approach. These have the potential to be used by supporting organizations to accompany refugees and migrants depending on the types of housing tenure they occupy (Chapter 4), along with eviction mitigation measures, which are detailed in this Legal Guide (Chapter 5).

A. Intersectionality

For the analysis of the effects of forced evictions on vulnerable populations, it should be considered that some people can have several identities or conditions. A person may belong to more than one vulnerable group at the same time (for example, an indigenous woman who is also a refugee, an elderly person and a person living with a disability) and, therefore suffer multiple manifestations of discrimination or be more affected as a result.

In General Recommendation No. 25 on gender-related dimensions of racial discrimination, the Committee noted that racial discrimination does not always affect women and men equally or in the same way, taking into account that certain forms of racial discrimination affect women to a greater extent than men¹³. For example, sexual violence against certain racial groups or forced sterilization of indigenous women.

The *IACHR Compendium on Equality and Non-Discrimination provides an* extensive review of the instruments, mechanisms, and reports through which the entity has positioned itself on the issue of intersectional discrimination against groups in vulnerable situations¹⁴. States are urged to consider the intersection of discrimination factors such as race, age, ethnicity and others to which women, children, LGBTI persons and even human rights defenders are exposed.

The Inter-American Court of Human Rights has recognized the situation of intersectional discrimination for women who are affected due to the convergence of several discriminatory factors, such as their conditions of being girls or women, indigenous people, people living with HIV, people living in poverty, etc. Discrimination is an obstacle that impedes the access, realization and/or protection of the human rights of those affected¹⁵.

The intersectional perspective allows us to understand the complexity of the effects and multiple dimensions of discrimination. Public policies on housing and related judicial decisions should consider an intersectional analysis in their handling of cases involving the risk of evictions or eviction events to guarantee the rights of refugees and migrants.

Below are the main international instruments that support differential approaches and can be applied in eviction cases in the region.

B. Refugees and migrants

Although the current regional dynamic of human mobility from Venezuela is part of the general crisis in this country, it occurs in different forms, temporalities, and motivations¹⁶. Regardless of migratory status or the specific situation of international mobility, we must recognize that refugees and migrants are in a permanent state of vulnerability, exposed to different types of violence and violations of their human rights, including various forms of discrimination¹⁷. This means that differentiated protection that takes into account their specific conditions is required¹⁸. Specifically, protection is especially relevant in those cases in which the cause of their flight has been their persecution or serious violations of their human rights in Venezuela, in which case they could be subject to international protection as refugees. The United Nations High Commissioner for Refugees (hereinafter "UNHCR") has called upon the States to grant this protection in a timely and adequate manner to persons from Venezuela through the national mechanisms provided for this purpose. UNHCR also indicated that these mechanisms must guarantee basic rights such as access to shelter¹⁹.

Several regional and international instruments have enshrined the right to adequate housing for refugees and migrants, as well as provisions against forced eviction (Inter-American Principles on the Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons²⁰).

Refugees and migrants commonly encounter additional barriers to accessing housing and/or avoiding evictions for reasons that may include employment conditions, xenophobia, racism, lack of documentation to regularize immigration status and lack of work permits, among others.

The fear of being expelled from host countries for not having regularized their migratory status has become a threatening factor for forced evictions from rental properties. This fear has also caused refugees and migrants: i) to not evidence their tenure over housing in informal settlements where they are at risk of eviction; ii) to no access justice; and/or iii) not seek advice or guidance on their situation and rights.

In addition, sometimes evictions or the risk of eviction may take place in areas of armed conflict, or in situations where illegal armed actors intervene in the administration or management of properties.

Finally, in some countries such as Colombia, refugees and migrants may decide to leave their housing because of an accumulation of unpaid rent and to avoid further problems with landlords.



Recommendations for dealing with cases of forced eviction of refugees and migrants

- As a preventive measure, facilitate access to user-friendly information and advice on national processes for the regularization of documentation for refugees and migrants should be ensured, as well as on procedures for the issuing of work permits and the permanent monitoring of the implementation of these procedures. These actions are fundamental to avoid forced evictions based on migratory status and/or type of documentation.
- Conduct awareness campaigns in host communities about the realities and threats faced by refugees and migrants from Venezuela allow them to understand their situations, generate empathy and activate their participation in the communities.
- Provide training to Venezuelan refugees and migrants on their right to adequate housing and related rights, including their right to not be forcibly evicted.
- For prevention and protection measures aimed at mitigating forced evictions, the organizational processes of refugees and migrants must be recognized and their capacities for intervening in specific cases must be strengthened.
- The participation of civilian migration authorities. Ombudsman's Offices and human rights agencies in situations where there is a risk of eviction or eviction of refugees or migrants is essential for guaranteeing their rights, regardless of their migration status.
- Carry out awareness raising and capacity building activities for authorities with specific competencies related to evictions, mediation and/or responses to forced evictions to mainstream and ensure the protection of refugees and migrants.
- Ensure the adequacy of regulations and the adoption of measures of any kind, including the elimination of regulatory and practical barriers, so that refugees and migrants have access to justice and protection from police and civil authorities when they face the risk of eviction or are victims of forced evictions.
- Conduct information campaigns on national processes for the recognition of refugee status and other international protection mechanisms. Identify cases in which the corresponding applications for refugee status have already been submitted and/or the respective procedures have been initiated. In these cases, monitoring should be carried out and the necessary actions should be taken to guarantee protection measures.
- Refugees and migrants may be affected by additional factors such as sexual violence or internal displacement, among others. Affected members of this population should be supported to access the protection mechanisms established for each of these cases.

C. Gender approach

Land, housing and property are issues that in Latin America have traditionally been managed and controlled by men. Women's rights over property in families and communities have been limited. This represents discrimination²¹ that marginalizes them from the decisions that must be made about housing and land (contracts, deeds, inheritance rights, and others). "The interdependence that exists between women's rights highlights the importance of women being able to enjoy their right to adequate housing and land in order to reduce the threat of discrimination, different types of violence, denial of political participation and other violations of their economic human rights"²².



©Save the Children /Sacha Myers

Women and forced evictions

In cases where a family or a community is at risk of being evicted or an eviction occurs, women are often more affected than men; they may be pregnant, breastfeeding, or female heads of households. Recognizing the disproportionate burden they suffer is key to defending the rights of this population. Also, once evictions take place and women are left homeless as a result, they are exposed to increased risks of violence and sexual abuse²³.

In situations of risk of forced eviction or eviction events in Latin America, women's economic, social and cultural rights are generally given little consideration. There are no public policies on housing or access to housing that consider the special conditions and needs of women in evictions²⁴. Multiple reports by Special Rapporteurs on



adequate housing have insisted on the need to strengthen national legal frameworks to protect women's right to adequate housing and to adjust the role of the courts to close the gap between legal frameworks and women's actual access to housing²⁵.

Sexual, gender and bodily diversity

The IACHR identified that the lack of housing for people with diverse sexual or gender identity increases their risk of being victims of different types of violence. In addition, in some cases this lack of housing is related to dynamics of forced prostitution including survival sex, among others. In the case of LGBT youth without housing, the IACHR has stated that "they experience higher rates of physical and sexual assaults and a higher incidence of mental health problems²⁶.



Recommendations for addressing cases of forced eviction using a gender perspective

- The inequality of women's access to housing and land must be recognized in the design of public policies and judicial decisions. This recognition must materialize in affirmative actions and judicial decisions that contribute to reducing this gap. The realization of the right to housing for women must start with "necessary access to land and territorial rights"²⁷.
- Public policies should include, among other aspects: i) Protection of women against domestic violence that may cause them to abandon their homes; ii) Measures that allow women to have "access, at an affordable price, to public services, such as water, electricity"²⁸, education, and health services; iii) Guaranteeing women's access to temporary shelters for longer periods of time; iv) Access to housing loans without being discriminated against.
- When there is a risk of eviction or evictions in progress, public entities that have specialized areas that provide support to women and people with sexual and gender diversity should be informed of the situation. For example: Women's Secretariats, programs for sexual and gender diversity, women's centers, etc. In addition, there is a need to identify available support networks for women, such as shelters, health centers, etc.
- Make use of tools to characterize the special needs of women and LGBTI people in programs that facilitate support to access adequate housing, provision of alternative housing and consultations about relocations, evictions, management of shelters and others. These tools should be integrated into consultations and the design of alternative housing plans. Their conclusions should be considered in the implementation process²⁹.
- It is important to promote women's participation in public policies that facilitate access to improved housing conditions and to accompany women in legal actions that seek to guarantee their right to housing and reparations when it has been violated.



©UNHCR/ Hugo Fuentes

D. Focus on children and adolescents

The validity of the principle of the best interests of children and adolescents takes on great importance in situations involving the risk of eviction or forced evictions that include minors, with an increased emphasis on the case of children and adolescents who are unaccompanied and/or separated from their parents or families. The right to adequate housing is a fundamental element in terms of the obligations of States to protect the best interests of the child. This right should be reflected in public housing policies and in guarantees that form part of eviction processes of housing they inhabit³⁰.

Lack of adequate housing and forced evictions have profound impacts on children and adolescents and their physical, emotional and social needs. "Children's health, educational progress and overall well-being are profoundly influenced by the quality of the housing they inhabit"³¹. Specifically, the lack of adequate housing raises mortality rates of children under 5 years of age because of contamination of enclosed spaces caused by insufficient ventilation and the poor quality of kitchens³².



In terms of mental health, homelessness in children and adolescents can be a vulnerability factor, exposing them to different emotional problems such as aggression, withdrawal, insomnia and anxiety³³.

The location of housing is essential for ensuring children's access to schools and education services. When housing is too far from these places, or if transportation is non-existent or too expensive, it is difficult for children and adolescents to receive an education³⁴.

Regarding the impacts of forced evictions, these have multiple effects on children and adolescents, including their impact on the right to education, which on many occasions may be interrupted due to the eviction. Furthermore, "it is considered that the effect of forced evictions on children's development is similar to that of armed conflicts"³⁵. It should be noted that in the case of children and adolescents, refugees and migrants, the impact is further increased when they are undocumented³⁶. In these cases, the risk of statelessness and invisibility of their human rights is even higher.



Recommendations for dealing with cases of forced evictions of children and adolescents

- Ensure that refugee and migrant children and adolescents enjoy the same human rights as nationals in terms of guarantees for their rights in eviction processes. This includes accompaniment by authorities, relocation, non-use of violence, removal and protection of their belongings, etc.
- It is necessary to highlight the presence of refugee and migrant children and adolescents in situations of risk and in eviction proceedings, through characterizations and censuses that are carried. These actions should take into account the special needs and dangers faced by refugee and migrant children and adolescents, primarily those who are undocumented. See the Checklist table below on aspects to be considered for the censuses.
- In all situations related to evictions where children and adolescents are affected, the presence of entities responsible for the protection of minors and the activation of care routes in cases where minors are at risk should be required. These risks may include persecution, domestic violence, abuse, exploitation, and family separation. It is important to identify and activate available international protection measures and family reunification protocols.
- Plans for alternative housing or temporary relocation to shelters must consider the availability of space to ensure children and adolescents' adequate physical and mental development.
- If the mental health of children and adolescents is affected, necessary assistance must be provided to restore their wellbeing.

Checklist

of aspects to be included in census questions for children and adolescents.

✓ ✕

- Basic information (age, gender, sex, etc.)**
- Family composition**
- Child or adolescent who is head of household**
- Overcrowded housing conditions**
- Access to education and related circumstances**
- Forced labor**
- Sexual abuse or violence / at-risk**
- Physical or emotional abuse / at-risk**
- Risk of homelessness as a result of eviction**
- Risk of forced recruitment**
- Risk of being a victim of trafficking networks or smuggling of children and/or adolescents.**

E. Ethnic approach

The international instruments signed by the countries in the region³⁷ establish that the relationship of the States with indigenous communities and families, regardless of whether they are nationals or not, is based on their recognition as members of peoples under the protection of Convention 169 of the International Labor Organization (hereinafter "ILO").

The Inter-American Human Rights System has been very proactive in protecting against forced evictions of families belonging to indigenous peoples on public lands, granting precautionary measures for cases of forced evictions in which there has been a disproportionate use of force, destruction of their homes or sources of livelihoods³⁸. These situations have been classified as "humanitarian emergencies" as the evictions left these communities without housing, access to water, health services, electricity and sanitation. Cases of evictions of indigenous peoples, afro-descendants and others protected by ILO Convention 169 can be linked to internal displacement against which they must be protected in each State based on international obligations (Guiding Principles on Internal Displacement. UN 1997).



In the case of indigenous settlements in private areas, it is important to refer to IACHR Resolution 03/2018³⁹ because of its relevance to the situations experienced by indigenous people from Venezuela in host countries. The IACHR ordered the State of Guatemala to adopt the necessary measures to protect the rights to life and personal integrity of indigenous families from the Chaab'il Ch'och community who were evicted from an area that was being claimed by a third party. The IACHR noted that the State did not prepare any plan to move or relocate the families, which placed them in a situation of great vulnerability.

In the case of shelters or temporary housing, and in addition to the conditions of habitability, access to public services and security, these facilities must carry out cultural adaptations referred to in Observation No. 4 of the Committee on Economic, Social and Cultural Rights. IACHR has requested that in the case of indigenous families, these shelters should be adapted to the cultures of the ethnic peoples⁴⁰.



Recommendations for dealing with cases of forced eviction of indigenous peoples, afro-descendants and other peoples recognized as ethnic groups

- Recognize that these groups are a collective subject protected by ILO Convention 169. Although public policies, State programs and programs implemented by national and international organizations may be aimed at families, they must recognize the ethnicity of indigenous and afro-descendant people (or others) and in their actions ensure the protection of the ethnic identities of participants.
- Establish contact with indigenous and ethnic organizations that support the rights of indigenous or other peoples or that represent them in the region. When possible, and when this practice does not increase exposure or risk, contact ethnic authorities in the country of origin to find out how these groups should be cared for and protected.
- Integrate the cultural adaptation of spaces in alternative housing, shelters and relocation programs. Members of the affected indigenous or afro-descendant peoples Family should be consulted about collective relocation plans.
- Humanitarian actions or housing plans that involve relocations, relocations to urban contexts or local integration must avoid dispersing families, affecting cultural practices and livelihoods, avoid the imposition of definitive separation from their culture or not considering a return to their communities as an alternative.

F. Focus on people living with disabilities

In accordance with the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, the States Parties undertake to adopt measures to eliminate discrimination against this population group in the promotion and provision of housing (Art. III, 1. a.).

In this sense, from the point of view of habitability, public policies on access to housing should consider housing that can be safely inhabited and adapted for the use of people living with some type of disability in their designs. Housing programs should meet the special access, mobility and use needs of people living with disabilities. The United Nations has recognized that this housing should enable people living with disabilities to live independently and be included in the community⁴¹.

In terms of accessibility to physical spaces for people living with disabilities, the theory of **universal design and reasonable accommodation** has sought to ensure access to assets and services without any discrimination barriers of any kind in conditions of equality and autonomy for all citizens exercising their rights⁴².

According to the Convention, universal design seeks that all built spaces and services prioritize human diversity, safety, comfort, efficiency, and equity, among others. It includes meeting the need to facilitate the interaction of the greatest number of people that includes older adults, obese people, people with excessively tall or short stature (including children), pregnant women and people with disabilities⁴³.

For example, these include the implementation of ramps, access controls, mechanical measures (elevators, automatic systems), handrails, stairs, sliding doors, furniture, auxiliary and complementary elements (restrooms, cafeterias, information points), environmental conditions (lighting), guide surfaces and/or sensory facilities.

Accessibility to the physical environment particularly considers: people with physical disabilities and reduced mobility, such as users of canes, walkers, crutches, and wheelchairs; people of short stature; and people with visual disabilities. Similarly, to determine accessibility to the physical environment, an assessment of the accessibility of the current infrastructure is required.

G. Older persons approach

The protection of the elderly is associated with effective guarantees of adequate housing, specifically considering the impact that housing has on the possibility of accessing adequate health treatment and special care.

Based on this need for protection, the Inter-American Convention on the Human Rights of Older Persons recognizes the need to protect this population and enshrining their specific rights. These include the right to decent and adequate housing (Art. 24) and to a comprehensive system of care that provides housing (Art. 12).

In Colombia, the Constitutional Court has reiterated the State's obligation to provide special protection to the elderly by guaranteeing their rights, particularly the right to decent housing and permanent relocation, even in cases where an eviction is carried out for security reasons or to avoid exposing them to a situation of greater vulnerability⁴⁴.



©UNHCR/ Nicolo Filippo Rosso



©Plan International/ Gina Piñeros

H. People with critical health conditions approached

Symptoms of diseases can be worsened by a lack of housing or adequate housing, which means that the realization of this right is particularly relevant for this population group. As mentioned throughout this document, the conditions of availability and habitability imply the provision of services such as drinking water and sanitation and guarantees of safety against health risks such as cold, wind, rain, etc. In addition, housing must be located away from polluted areas and its location must allow people to have access to health services.

The Committee on Economic, Social and Cultural Rights recognized that people with terminal illnesses should have priority in relation to the affordability of adequate housing⁴⁵. The Special Rapporteur on adequate housing identified a series of population groups that, due to their particular conditions require special protection. This includes people with health problems, people with complex health needs, those affected by HIV/AIDS and those with critical illnesses⁴⁶.



Common recommendations for people living with disabilities, older adults and people in critical health situations

- From the point of view of availability, housing supply policies should facilitate access to housing that responds to people's specific needs and the existence of access plans through purchase, free housing and leasing.
- Accompany census or characterization processes that describe the specific needs that alternative housing or shelters must have. This will guarantee the habitability of people living with disabilities, the elderly and people in critical health situations, as well as including their needs in judicial processes for evictions that may affect them.
- In the case of alternative housing offered following eviction processes, both the housing or shelters offered must include the necessary adaptations to ensure that they can be used by people living with disabilities, the elderly and people in critical health situations.
- Verify and ensure that any eviction procedure is carried out with the observance of medical or special protection measures and/or needs, including compliance with regulations regarding the notification of evictions that considers the specific conditions of those affected.
- Accompany people living with disabilities, older adults, or people in critical health condition, during eviction situations to ensure that their rights are guaranteed.
- Include specific care pathways for this population and referrals to competent entities in the eviction protocols developed by organizations or communities (or request that they are included in state protocols).

4. Right to adequate housing for Venezuelan refugees and migrants according to their housing tenure profile

Due to the shortage of housing, difficulties with accessing housing and/or the occurrence of an eviction, groups or families of refugees and migrants from Venezuela are forced to occupy public spaces, understood as property owned by local authorities and that are intended for the use of all the inhabitants of a locality, such as streets, parks, transportation terminals, etc.



A. Rental of housing or land

According to the Regional Survey on evictions conducted by the R4V Platform, refugees and migrants from Venezuela establish different types of private contracts with homeowners in the region for their temporary settlement. These agreements may involve the renting, use or loan of part or all the dwelling, among others, and may be written or verbal. In principle, verbal contracts have the same value as written contracts, although at the time of establishing their scope this may cause conflicts of interpretation. These contracts are based on the civil laws of each country and specify the rights and obligations of each party within each type of contract.

In the case of rentals of land, housing or rooms, which are usually for periods of months, weeks or days, refugees and migrants from Venezuela retain their right to adequate housing and specifically to not be victims of forced evictions. In case of non-compliance with the rental contract (e.g., lack of payment, different uses, non-compliance with cohabitation rules, etc.), refugees and migrants have the right to have the eviction determined/ordered by the competent authority as a result of administrative or judicial processes provided for in domestic legislation in which all formal and material guarantees of due process are respected. Two types of evictions have been identified in this type of contract:

1. Evictions arising from judicial or administrative proceedings.

In these cases, a judicial or administrative authority, depending on the country, orders an eviction for breach of the rental contract. In these cases, the judicial or administrative process must take into account the following ICESCR standards⁴⁷ :



Pidesc standards for a judicial or administrative eviction process

- a. **The opportunity to consult with affected persons** about the composition of the household and their needs.
- b. **Provide legal assistance** guarantees of access to justice and a process based on the right to due process, including the right to appeal judicial and/or administrative decisions.
- c. **Provide adequate and reasonable notice** in advance of eviction.
- d. **Have the presence of government officials** and other institutions involved in the eviction, identify all persons involved in the eviction and be aware of the competencies of each authority.
- e. **Consider the rights of special protection groups** such as children and adolescents, pregnant women, etc., and identify their special needs.
- f. **Guarantee alternative housing** or shelter agreed upon with the evicted persons that prevents them from becoming homeless when they do not have economic resources.
- g. **Forced eviction** cannot be ordered as a punitive measure.
- h. **Affected persons must be guaranteed** due compensation for any personal or real property they are deprived of as a result of the eviction.
- i. **Provide timely information to the interested** parties on the planned evictions and, when applicable, the purposes for which the evicted land or dwellings are to be used.
- j. **Evictions should not be carried** out in very bad weather or at night, except with the consent of the affected persons.

The Committee on ESC rights, through the activation of the Optional Protocol to the ICESCR, established the possibility of submitting individual communications on violations of the right to adequate housing to the Committee on ESC rights⁴⁸. In the case of contracts between individuals, the Committee on ESC rights has ordered States parties to provide alternative housing for those who lack the resources to afford it. In the case of *Ben Djazia v. Spain* (2015), the Committee on ESC rights established that the State retains its position as guarantor of the obligations of the ICESCR, even if the eviction is ordered by a judge and involves rentals between private parties⁴⁹. This ensures that the evicted persons are not be left in a situation that constitutes a violation of the ICESCR or other of their human rights.



Context of tenants and landlords during the COVID-19 health emergency.

The COVID-19 health emergency has caused the loss of millions of jobs and has seriously affected the income of populations that work in informal commerce, as is the case of the Venezuelan population that has migrated to countries in the region. This has forced local and national governments to issue temporary laws or decrees to alleviate the situation of tenants or homeowners⁵⁰. Although these are not special legal instruments for refugees and migrants, these laws have contributed to temporarily improving their situation and have activated the possibility of reaching agreements between tenants and landlords. This has created an important opportunity for expanding mediation efforts by third parties that are either public or private organizations⁵¹.

Despite the fact that these decrees and laws were used as a tool to protect people during the first months of the pandemic, they were only in effect for a few months in several countries, leaving the most vulnerable population exposed to the risk of eviction. This occurred despite the recommendations from the UN Special Rapporteur on Adequate Housing regarding the need for tenant relief measures while the COVID-19 pandemic continues⁵². Specifically, the Rapporteur reminded the States to consider the following recommendations based on the right to adequate housing:



Recommendations based on the right to adequate housing in the context of the covid-19 pandemic

- Prohibition of evictions for late rental payments. Evictions scheduled prior to the pandemic shall be suspended.
- Freezing of rent payments and prohibition of increases, including their regular readjustment.
- Prohibition of termination of rental contracts, except for criminal behavior that affects other residents.
- Guaranteed access to housing, including financial support.
- Implementation of compensation schemes for landlords affected by the lack of rental payments due to the pandemic.
- Ensure that no essential services are suspended or denied for non-payment, late payment or underpayment of rent or mortgage payments.

Beyond public policies and judicial decisions, mediation, understood as the intervention of a third party accepted by the parties to a conflict that seek to transform it. This has become an important instrument for resolving tensions arising from housing contracts in the region.

Chapter 5 evidences how the experiences of mediation in conflicts between tenants and landlords in Ecuador, Brazil and the Dominican Republic have proved to be a best practice for dealing with situations of risk of eviction or eviction processes that are underway. In these cases, mediation considers both the situation of those affected by evictions and landlords who in the informal real estate market may also be vulnerable people.

2. Evictions under duress or provoked by the use of violence or de facto situations.

These are situations in which refugees and migrants are forced to leave their homes due to different situations involving violence or threats. These situations may arise from conflicts between tenants and landlords due to a breach of contract (usually due to lack of payment), following a request to vacate the housing without a cause for breach (such as when the landlord wants to use it for themselves or a family member), or sometimes for reasons related to xenophobia or coexistence issues. These situations occur regardless of whether the tenants have written or verbal leases.



©Oxfam/ Mario Niño

In these cases, there may be intervention not just by the landowner, but also by gangs or third parties in the area. In contexts of armed conflict, there may be participation by illegal armed groups in the management of land or housing. On many occasions these situations can include not just threats and violence, but also de facto actions against refugees and migrants, such as cutting off public utilities, withholding goods or documents, inappropriate proposals and sexual harassment and violence. These actions are used as mechanisms to pressure tenants to pay the rent or to expel them from their homes.

An expulsion from a dwelling by private individuals or armed groups under these conditions constitutes a crime, whether it is a threat, sexual harassment, or violation of residence, etc. The typology of these crimes may vary according to the legislation of each country and must be investigated and punished⁵³. Persons expelled from a dwelling using violence should be considered as victims of internal displacement in accordance with international law⁵⁴. This implies the provision of assistance from mechanisms for victims of forced displacement that exist in each country to provide care, protection, and reparations.



General recommendations for guiding refugee and migrant tenants from venezuela

- Seek free legal advice from NGOs, universities and human rights organizations (Ombudsman's Office, Public Defender's Office, Ombudsman's Office, etc.), especially those that also have experience in mediation and/or conciliation (see Chapter 5.b. of this Legal Guide for more information on mediation). In terms of legal advice, the tenant's manifest disadvantage vis-à-vis the landlord due to their lack of knowledge of the legal system in which they are acting should be considered.
- When there is a judicial or administrative process, the specific needs of the family group or community (for example, the situations of pregnant women, minors, sick people, refugees, etc.) should be presented to these authorities so that they can be taken into account in the eviction process and in the options offered by public authorities.
- Obtain documentation of contracts, utility bills and rental-related communications (text messages, chats, etc.). In the case of verbal contracts, it is important have witnesses who can attest to the conditions under which they were agreed. This will contribute to preparations for corresponding legal actions, opposing possible forced evictions and participating in mediation processes or dialogue scenarios.
- See Chapter 5.b. for special recommendations based on the experience of public and private organizations in mediation and/or conciliation between owners and refugees or migrants.
- When the landlord or a third party uses violence or threats to expel them from the dwellings, it is recommended that complaints are filed with investigative and/or local police agencies that can intervene to protect the tenants. In situations where these complaints may put them at greater risk from armed groups or third parties, the accompaniment of human rights organizations, public oversight agencies or international organizations is essential to reduce risks. This accompaniment can be provided either by filing complaints or creating public visibility of the situation, if appropriate, and/or accompanying those affected to reduce risks and avoid evictions.
- When accompanying situations of de facto expulsions, it is very important to evaluate that the actions taken do not increase the exposure of those affected and increase their level of risk. In each case, an evaluation should be made with the communities and the authorities should be involved to offer protection and possible relocation routes to shelters or alternative safe houses.
- In cases involving armed conflict or generalized violence, the priority should be to protect the life, liberty, security and bodily integrity of those affected through mechanisms that allow them to leave their homes safely, protect their property and find alternative housing or safe shelter that guarantees confidentiality. Human rights oversight and protection agencies and entities should be involved as long as they have not been infiltrated or influenced by armed groups or groups that provoke violence.



©Oxfam/ Mario Niño

B. Settlements in public spaces

These occupations, in some circumstances, may hinder public services such as circulation on roads or the use of recreational spaces, such as parks⁵⁵. Their occupation is not the result of a contract or an agreement, but due to the need to have a place to protect themselves. On many occasions these occupations are carried out collectively and the occupants generate some type of organization to cook, monitor and manage solutions.

Settlements in public spaces do not generate a right of occupation over these areas. However, in certain cases it has been pointed out that the principle of legitimate trust must be considered. This means that due to the State's permissiveness or tolerance in the occupation of these spaces, people have generated an expectation of a housing solution, which obliges the State to grant them a transition period and relocation alternatives⁵⁶.

These settlements always involve a risk of eviction through rapid processes that are usually carried out by police. Even in these cases, refugees and migrants must have their human rights respected and not be evicted without a previously consulted and defined alternative⁵⁷.



Recommendations and actions for cases of informal settlements in public spaces:

- The first and most important action should be to open a channel for dialogue and consultation with local authorities regarding the situation of families occupying public space. A best practice is to have a round table with local and national government entities, community/family representatives and national/international organizations that accompany the families.
- These roundtables or dialogue spaces should be based on the recognition of the human rights of the occupants, including their right to adequate housing and to not be evicted without a housing alternative (see Chapter 5.c. Intervention in the construction and monitoring of plans agreed upon between authorities and communities at risk of eviction or that have been evicted).
- Accompany the collection of information about the people involved in the eviction process and their special protection needs, including people who plan to permanently settle in the area, who are in transit to other cities or countries in the region and/or who want to return to Venezuela (see Chapter 5.a. Characterizations of risks of eviction or evictions).
- Activate protection networks and provide a warning about the eviction or risk of eviction to those who can provide assistance, alternative housing, legal advice, money transfers, etc. for the prior identification of services and their availability at the time of eviction.
- In these cases it is very important to be able to agree with the authorities on how the eviction will be carried out in order to avoid disproportionate use of force and harm to the occupants.
- Support judicial and administrative processes aimed at protecting Venezuelan refugees and migrants. If appropriate, contribute to gathering evidence, submitting petitions and reviewing the adoption of other protective actions in favor of their human rights, in domestic legislation or international instruments.
- Facilitate understanding about the relocation or alternative housing options proposed to individuals or families by public entities, for example: implications and conditions of the proposed shelters, location, safety and circulation conditions; the proposed option for sick people, children and adolescents; transfer of assets; evaluation of the proposal for temporary or long term stay; type of administration of the shelters; and internal rules, etc.
- When carrying out eviction operations in public spaces, take into account that the agreements with public authorities must contain clear rules on: provision of legal assistance/guidance services; date and time of eviction; clarity regarding the inter-institutional response; activation of biosecurity protocols; and mechanisms provided by government and humanitarian community services that respond to the specific needs of those affected.

C. Public and private shelters

Shelters are spaces established to provide temporary protection to people who lack adequate housing and whose human rights have often been violated. People arrive at shelters either because they are homeless or because they are linked to relocation programs for evicted persons.

These are places that are administered by the State as a guarantor of their rights or administered by third parties delegated by the State. They can also be emergency spaces administered by NGOs and national or international civil society organizations, as well as religious organizations or places (camps or settlements) managed by international organizations in coordination with State entities.

As temporary emergency solutions to flagrant human rights violations, shelters seek to temporarily provide adequate housing, facilitating the realization of the right to an adequate standard of living and other interdependent human rights such as education, health, the rights of minors, drinking water, etc.⁵⁸ Considering the serious situation in Venezuela and the health crisis caused by COVID-19 in Latin America, new shelter spaces have been opened or existing ones have been expanded in accordance with the programs established in each country⁵⁹.

Shelters are temporary and sometimes precarious solutions in relation to the cultural requirements and rights of persons with special needs such as people with medical needs, the elderly, people living with disabilities, indigenous peoples, separated or unaccompanied children and adolescents and pregnant women. The temporary nature of shelters implies that at the same time, and in consultation with the families, individual or collective solutions must be sought for the right to adequate housing.



©UNHCR/ Felipe Irnaldo



Recommendations for public and private shelters

- The shelters must be able to guarantee the initiation of consultations by public authorities in charge of housing policies with families and communities on the topic of possible relocation to alternative housing plans. These consultations should also be accompanied by entities in charge of public oversight and the protection of human rights.
- To make these consultations operational, it is advisable to establish a working group with public entities, accompanying organizations and the affected people. These consultations should consider the characterizations of families and communities to seek adequate solutions to their specific needs based on their human rights.
- It is not always possible for there to be collective solutions and for families to be offered different housing solutions. Therefore, consultations must take into account the needs and expectations of each household.
- Although the shelters are temporary solutions, it is the States' obligations to ensure that people will not be forced to leave them without being offered a housing solution or the possibility of staying in another shelter, unless there are breaches of the rules of coexistence established for each shelter.
- Once in the shelters, the corresponding authorities should be asked to provide guidance to refugees and migrants on the mechanisms for accessing documentation, health, education and other programs offered by the State.
- To avoid discrimination and exclusion against refugees and migrants from Venezuela, work must be carried out with other populations that are also staying in the shelters.

D. Territories of indigenous peoples, afro-descendants and other peoples protected by ILO Convention 169

The territories of indigenous peoples and afro-descendants in Latin America, primarily those located on the international borders that Venezuela shares with Colombia, Brazil or Guyana (but not exclusively), have received refugees and migrants from Venezuela who are members of indigenous communities, as well as other population groups from rural and urban areas.

Three international instruments are essential for defining the territorial rights of ethnic peoples in the region: ILO Convention 169⁶⁰, the American Convention on Human Rights and the OAS Convention on Indigenous Peoples. These instruments establish the framework of indigenous peoples' rights to their territories under the following principles:



Principles of the rights of ethnic peoples

- a. The States recognize the communal ownership** of indigenous, afro-descendant and other peoples over the lands they occupy, regardless of their titling by governments.
- b. States must recognize** the rights of indigenous and other ethnic peoples as collective subjects, as well as guaranteeing their individual rights. These peoples must be consulted on public policies that affect them⁶¹, for example, plans for their reception in shelters, relocations or public policies that regulate their temporary or permanent mobility⁶², with the aim that the communities or members of the refugee or migrant peoples maintain their indigenous identity.
- c. As a general principle,** occupations that occur in the territories of ethnic peoples, regardless of their title or form of ownership, do not generate any rights for the refugee or migrant individuals, families or communities that occupy them. In any case, States continue to have an obligation to protect their territories.
- d. In the case of peoples** living on the borders of several States, they have guarantees established by international instruments to maintain cultural, family, and economic relations, regardless of national borders⁶³. This implies a range of agreements between States and the authorities of the indigenous or ethnic peoples of those territories.
- e. If they are not indigenous** peoples of trans-border or binational peoples, the indigenous authorities that govern the territory, with the support of the State, are the ones who must provide authorization for the use of the territory, for example, to build shelters or set up camps for refugees or migrants.
- f. Evictions from the territories of ethnic peoples** may lead to additional displacement as a consequence of internal displacement. Faced with this situation, States have an obligation to take protective measures that favor displaced persons, particularly due to the special dependence of these population groups on their land⁶⁴.



© UNHCR/ Felipe Irnaldo



Recommendations regarding territories of indigenous, afro-descendant and other peoples protected by ILO Convention 169

- The promotion of temporary or permanent occupations in the territories of indigenous peoples, afro-descendants or other ethnic peoples to establish housing for refugees or migrants without considering the collective territorial rights of the host communities and their ethnic authorities protected by ILO Convention 169 should be avoided.
- In the case of accompanying refugees or migrants who settle in the territories of ethnic peoples, coordination should be made with the ethnic authorities that govern the territories on how to manage the land tenure or housing situation of the people who settle in the collective territory.
- Housing or shelter programs offered to members of indigenous or other ethnic peoples from Venezuela in indigenous peoples' territories in host countries must have been consulted with the community that exercise communal ownership of the titled or traditional territories under the protection of ILO Convention 169.
- Evictions and/or mediations on housing and land evictions, which are carried out in the territories of peoples protected by ILO Convention 169, must be carried out or coordinated by the authorities of the ethnic peoples who own the territories.

The following is an inventory of legal or paralegal actions based on practices identified in the region or cases from other regions in the world to provide legal support to populations at risk of eviction, with an eviction in progress, or have already been evicted.

The inventory is intended to provide guidance on protection actions and possibilities for accompanying those affected by forced evictions based on the framework of rights presented above and the types of housing or land tenure that are most common among refugees and migrants from Venezuela in the region.

5. Inventory of key measures in the region for the mitigation of forced evictions

In order to respond to the consequences of evictions faced by a community, a family or an individual, usually, dialogue spaces or roundtables for consultation and negotiation are formed between those affected and State authorities, in which the obligation to consult and offer an alternative to those affected by evictions is made effective. In these spaces, local or national governments offer housing or shelter programs or other alternatives and the State's offer is presented to those affected, whether individually, as a family or collectively (for example, in relation to health, education, housing, protection, subsidies, etc.).



A. Characterizations of eviction or eviction risk

The collection of information about the profile of communities and families and the identification of their situations of vulnerability are a basic tool for demanding the right to adequate housing for the following reasons:



Reasons for collecting information about communities and families at risk of eviction

- a. Facilitates informed dialogue** with authorities and support organizations.
- b. Identifies specific needs** of individuals, families and communities that are at risk of eviction, which should be considered in public policies and judicial decisions.
- c. Report on the situation of habitability**, availability of public services and legal security, among others, in which individuals and communities find themselves in relation to the right to adequate housing.

The characterization processes, either for a family nucleus or a community, should produce relevant information about: i) negotiations that may take place with public authorities; ii) the support provided by oversight and human rights organizations that accompany the processes; and iii) measure access to justice during any phase of the eviction, regardless of whether it is a community, a family or an individual⁶⁵.

In addition to community efforts, and with or without the support of accompanying organizations that is identified as a best practice in the document accompanying this Toolbox, characterizations are a basic tool that should be obligatory for the official entities responsible for assisting the refugee and migrant popula-

tion. Appropriate public policies and judicial decisions depend, to a large extent, on studies that consider the specific needs of people at risk of eviction or who have been evicted. Characterizations can include one or several dimensions; for example, they can report on the psychosocial situation of those affected or focus on the legal conditions of the housing. This decision should be based on the short and medium-term assistance needs, and in each circumstance should be evaluated with the communities based on their expectations, time frame, most pressing needs, or long-term strategies.

Here we suggest recommendations for following up on the characterizations carried out by States in communities or with families of refugees and migrants from Venezuela:



Recommendations to follow up on characterizations

- Facilitate participation through representatives in planning spaces for characterization workshops. In the case of small groups, people could be convened in public spaces in the territory or place where they are located, such as community houses, plazas, sports courts, providing a timely and clear call for participation⁶⁶.
- If general characterization workshops are going to be carried out, the communities must be involved in the actions to: i) communicate and convene the community's participation in advance; ii) provide the necessary resources to carry out the workshop: refreshments, transportation, logistics, etc.; and, iii) prepare messages and provide adequate information to the population⁶⁷.
- If the population includes people from ethnic groups, translators should be available to facilitate interaction. If possible, processes should be agreed on with the respective ethnic authorities.
- Verify the availability of people for the characterization activities. Ensure that children and adolescents, refugees and migrants, women and people belonging to LGBTI communities, older adults and people living with disabilities, as well as other populations that have special needs, can participate in the characterization methodologies. The formulation of the questions should consider the vulnerability conditions of the people.
- Clearly inform participants that all information provided by individuals will be kept confidential and request guarantees that the information will not be used for other purposes.
- In certain cases of threats or situations of violence, the characterizations carried out by public entities may put the inhabitants of a community or a family at risk. In case of this risk occurring, the State should be asked to evaluate other mechanisms to obtain information or suspend the characterizations or censuses.
- The people in charge of the characterization activities must be properly identified and act with transparency.
- Sufficient documentation of all characterization activities should be created or requested and accessibility to communities or families should be established.



The following checklist of conditions for carrying out characterizations is illustrative but not exhaustive.



Checklist

of conditions for carrying out characterizations⁶⁸

✓ ✕

- There is no coercion by private third parties, either the Armed Forces or armed groups.
- There are no threats or risks to community leaders or processes and there haven't been any related antecedents.
- There is no social conflict that can be made worse by the characterization.
- There are adequate and voluntary conditions for participation.
- The process has been duly informed in the design of its stages and selection of actors, participants, methodologies, etc.
- Carrying out the characterization will not increase the risk of refugees and migrants from Venezuela.



B. Legal elements to strengthen mediation processes between individuals and between individuals and the State.

Mediation is a method through which parties resolve a conflict with the intervention of a third party that facilitates dialogue and helps them reach an agreement (hereinafter, "Third Party Facilitator"), or to prevent the eventual emergence of a conflict. At the end of the process, the agreements reached are recorded in a document or minutes. In some countries, such as Colombia and Peru, the term "conciliation" is used, while in others, such as Ecuador, the term "mediation" is usually used.

In general, this mechanism may have different effects depending on the conditions under which it is carried out: i) the setting in which it takes place; ii) the qualities of the Third Party Facilitator; and iii) the observance of formalities.

When mediation takes place outside a judicial process, it is an extrajudicial mediation (or extra procedural as it is called in some countries), as opposed to judicial mediation (or intraprocedural), which takes place within the framework of a judicial process.

In terms of the qualities of the Third Party Facilitator, a legal mediation requires the third party to be an expert in conflict resolution and authorized to intervene in this practice. This classification includes authorized mediation centers where mediations are facilitated. When it is a "community" mediation, the Third-Party Facilitator is a leader with community recognition and a high level of social commitment who is also endorsed by the relevant authority.

Depending on the formal stages that are followed, the mediation can either be formal or informal. For example, in Ecuador, mediation with the Ombudsman's Office is informal, and the resulting decision does not have the effects described below, while mediation with the Public Defender's Office is a formal mediation that generates effects in legal proceedings.

Without ignoring the legal framework in each country, the following are the effects of the act of mediation or conciliation:



The following should be taken into account regarding the effects of decisions resulting from mediation

- a. Res judicata:** Verify whether disputes resolved through mediation can be subject to review again.
- b. Enforceability:** Establish whether the agreements reached contain clear and enforceable obligations that can facilitate a more expeditious judicial process.
- c. Procedural requirement:** Verify in each case whether the judicial process that orders the eviction has mediation as a requirement.
- d. Suspension of court orders:** Verify whether the mediation allows for the suspension of eviction court orders, as in the case of Brazil.



In accordance with the above recommendations, it is important to identify and take into account the effects of each type of mediation in accordance with the national legislation of each country. It is also necessary to be aware of the documents produced by mediation, as well as the procedural consequences of compliance with the agreements reached.

In contexts involving the risk of eviction of refugees and migrants from Venezuela who are tenants of private properties, discussions and dialogues are carried out between landlords and tenants with the participation of third-party facilitators. These do not necessarily constitute mediations in the strict sense. These third parties may be NGOs, community-based organizations, or any neutral facilitator. This is a situation that occurs in countries including Colombia and the Dominican Republic⁶⁹.



©Profamilia

Taking this situation into account, it is important to clarify that based on the civil law principle "every agreement is law for the parties", the agreements reached by landlords and tenants in these situations are binding, even when their enforceability requires procedures that are different from those established for mediation proceedings. It will also be important to confirm the validity and effect of these approaches and their resulting documents within the framework of a judicial proceeding and in accordance with the local legislation of each country. It is also important to consider situations in which mediation is not the appropriate tool. For example, in cases where armed groups are involved, or people are coerced. This means that it is always necessary to verify that there is consent from the parties to initiate and/or continue with the process⁷⁰ and that there are no risks to the safety and bodily integrity of the participants.

It is necessary to distinguish between mediation and withdrawal. The latter consists of an optional waiver by the claimant of their claims. Its effect is either the termination of a judicial proceeding, in the event of withdrawal of all the claims constituting the claim, or the exclusion of the withdrawn claim from the proceeding. In addition, the dismissal of a claim prevents future claims and terminates it definitively.

Considering the situation described above, choosing mediation does not consist of the claimant waiving their requests in a judicial proceeding, unlike withdrawal. It is a mechanism that facilitates reaching agreements on the claims of the parties, both within and outside the framework of a judicial proceeding.

A best practice that has been adopted in the Dominican Republic is the organization by partners of massive and individual legal advice sessions using virtual media to provide guidance to refugees and migrants who are at risk of eviction. In these spaces, information is provided about their rights, the eviction procedure (in accordance with the case), where to go when a forced eviction occurs, when there are situations of intimidation, threats, and/or when the owners or administrators of the dwellings resort to the arbitrary suspension of basic services (water, electricity, gas, blocking of parking) to place pressure on the tenant and without any legal authorization.

It is also useful to identify authorized mediation centers, which in some countries include mediation centers in universities and certain public entities. For example, in Colombia, the Municipal Public Defender Offices, which are oversight bodies that form part of the Public Prosecutor's Office, offer this mediation service in relation to various issues including home protection and evictions⁷¹. It will also be necessary to ensure that the migratory status of refugees and migrants does not constitute a barrier that impedes access to these mediation centers.

In the case of ethnic territories, in mediations involving land and housing, it is necessary that the mediations are carried out by the respective ethnic authorities or authorized by them and ensure that the concepts addressed in the mediation include those related to the culture of the place of accommodation⁷².

Despite the advantages of this conflict resolution methodology, we recommend evaluating the relevance of mediation for each particular case, since the implementation of this practice may increase the risks faced by refugees or migrants from Venezuela and/or increase their level of exposure to these risks.

The following checklist of conditions for conducting mediations is illustrative but not exhaustive.



Checklist

of conditions for conducting mediations

✓ ✕

- There is a willingness on the part of the parties to engage in dialogue and mediate.**
- The necessary information about the parties and the conflict is available before the mediation starts.**
- There are no threats or risk of violence from either party towards the other, nor from external agents.**
- A neutral third party is available to conduct and manage the mediation.**
- Physical spaces are available so that the mediation can be carried out in safe conditions.**
- The parties have been previously informed about the process and its effects.**

C. Design and follow-up of plans agreed upon between authorities and communities in eviction situations.

In this Legal Guide, we present a catalog of factors that should be considered in the framework of consultation spaces to design a relocation plan or an adequate housing program for refugees and migrants and/or the communities in which they live based on their human rights and the obligations of States that have been reviewed in this Legal Guide.

Consultation is an instrument used by public authorities to present a plan or project in order to obtain the views of citizens and discuss the scope and consequences of the proposed initiative. As seen above, the Committee on ESC rights has established that procedural guarantees in cases of evictions include "a genuine opportunity to consult with the persons affected" and when the persons affected by the eviction do not have access to a genuine opportunity to be consulted⁷³. When those affected by the eviction have no recourse, States must "take all measures within their means to provide alternative housing, resettlement or access to productive land, as appropriate"⁷⁴.



Recommendations for the accompaniment of communities or families in consultation processes for eviction situations

- For consultations to be "authentic", they must be as broad as possible, have been convened in due time and communicated in a manner that is appropriate to the situation experienced by the affected parties.
- A summons to participate sent to just one affected sector of the community, for example, just to men, or communication to a family lacking resources through a notice posted in a distant public office, are examples of summons that violate the rights of those affected.
- The consultations should help reach agreements on the manner and time in which the evictions will be carried out, as well as the entities and organizations that will accompany them. It is particularly important to define aspects such as: the role of public security; the disposition of the evictees' property and its protection; and the way in which sick people and people living with disabilities will be moved and cared for.
- Censuses, characterizations, or their updating are important for consultation processes. Communities and households should demand updated information prior to the consultation process, considering that this instrument has a direct effect on the results of the consultation and the negotiation of housing alternatives. They should also emphasize especially vulnerable groups.
- Due to the number of families affected or in accordance with organizational, ethnic or community processes, calls to participate in consultations are sometimes communicated to community or family representatives. Communities should be able to decide whether to participate in the consultations through their representatives or to participate more broadly.
- In the case of family consultations, the accompanying organizations and the State must ensure that the women who are part of the household are invited, taking into account the discrimination that they have historically experienced in terms of housing and land.
- Consultations should always consider situations of threats, violence or coercion that families or communities may suffer. It is recommended to request that the State evaluate the most convenient places for the consultations, the level of risk involved, and the security measures necessary to hold them with the affected communities or families.
- Ensure that when carrying out consultations, public authorities provide full information on the causes of evictions, existing plans related to the land where people will be evicted from and proposals for alternative housing, relocations or the conditions of shelters that are offered as a housing option. If technical information is available, they should offer advice so that people fully understand the information.
- Sometimes it will be necessary for communities to request additional information from public authorities. In these cases it is important to resort to the constitutional remedies for access to public information established for each country.



©Tearfund/ Edrei Cueto

- A consultation process should conclude with a record of agreements and disagreements. It is important that the minutes are as complete and clear as possible, bearing in mind that they will be proof that the community or family was, or was not, adequately consulted, and it also evidences the commitments reached on alternative housing, shelters and social care routes.
- Prior, free and informed consultations with indigenous peoples, afro-descendants and other peoples of ethnic origin (“tribal” in the terms of ILO Convention 169), have a special legal framework and are mandatory when plans, programs or administrative policies affect them, as in the case of plans for relocation and construction of shelters for refugees or migrants who are indigenous peoples from Venezuela in the region.
- Accompanying the follow-up of the agreements is as important as the agreements themselves. The fulfillment of the agreements may involve months or years for the definition of budgets, urban projects, construction of housing or provision of housing or official shelters, which is why it is essential to involve control bodies such as the Ombudsman's Office, etc. in medium and long term follow-up.



Checklist

of conditions for the implementation of consultations

✓ ✕

- The competent authorities called for consultation with the affected people in a timely manner.**
- Prior information has been provided regarding the stages of the consultation and the issues to be addressed, including housing alternatives.**
- The census of people or communities to be evicted has been updated.**
- All sectors in the community are represented in the consultation.**
- There is no threat or risk to community leaders or members, nor have there been any historical threats or risks.**
- Security conditions have been established for carrying out the consultation.**
- The community has access to technical assistance if required.**

D. Actions in the Inter-American Human Rights System and the United Nations Organization

1. Precautionary Measures before the IACHR

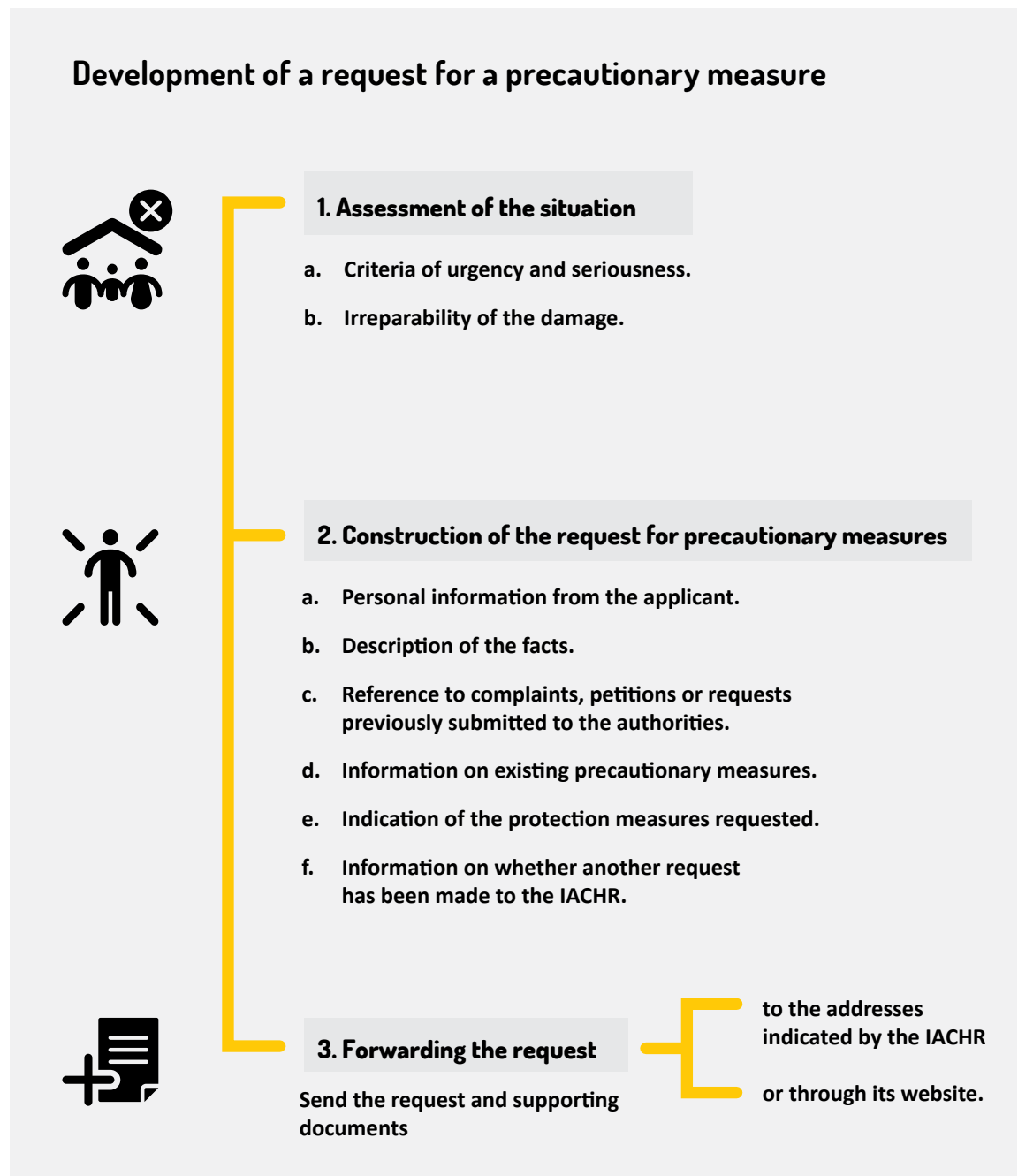
During urgent and serious situations in which serious and irreparable harm may be caused to persons or groups of persons, the IACHR may order a State Party, at its own initiative or at the request of a party, to adopt preventive measures in order to protect the human rights of such persons⁷⁵ and to prevent such harm from occurring.

Understanding the importance of the right to life and its relationship with other human rights, the IACHR has on several occasions ordered States to adopt precautionary measures in favor of communities or families that are in a situation of vulnerability due to an eviction from their lands or homes⁷⁶. The particularities of these cases in the IACHR are related to: the existence of families belonging to indigenous communities; the presence of children and adolescents, the elderly and women; the disproportionate use of violence; the destruction of the belongings of those affected; and the claim of lands inhabited by those affected by a third party or by the State.



How to file a precautionary measure before the IACHR?

Taking into account the criteria of seriousness (the serious impact of an event on the protected right) and urgency (the imminence of the risk or threat) of the situation, as well as the irreparable nature of the damage (the effect cannot be repaired or restored), any person or group of persons may file a request for precautionary measures before the IACHR on their own behalf or on behalf of another. This procedure does not require a lawyer and is free of charge.



Regarding the description of the facts, it is important to take into account the following:



Recommendations for filing an injunction to prevent a forced eviction or to mitigate damages

- The request for a Precautionary Measure to the IACHR must give a clear and detailed account of the situations that gave rise to the risk of eviction, for example: the threats received, the plans from local administrations, pressure from private parties to evict them or reasons for the order forcing them to leave their homes, etc.
- It should be a story that follows a chronological sequence of events and logically tells how the risk of eviction arose and evolved, as well as who was involved.
- Place a special emphasis on describing why this is a serious and urgent situation in which the IACHR should intervene to prevent or mitigate the damage. For example: if the eviction is carried out, children will be forced to live in the street; the eviction puts the life of an indigenous community at serious risk; the eviction puts a family at serious risk of human rights violations.
- Assess the current situation of the beneficiary or beneficiaries. It is important to identify what type of people or communities are at risk, what their condition is, their specific gender, ethnic and diversity needs and the possible damages if an eviction were to occur.
- If possible, include a copy of all documents that indicate the seriousness and urgency of the beneficiary's situation, as well as the imminence of the eviction (eviction threats in emails, chats, pamphlets, court orders, press reports on the case, etc.).

The request for precautionary measures can be made through the IACHR website, for which the applicant must register and fill out the form. This must contain the information indicated above⁷⁷.

2. Submissions to the Committee on ESC rights

Individual communications are a mechanism for reporting violations of human rights to the Committee on ESC rights contained in the ICESCR⁷⁸ by States Parties that have recognized the competence of the Committee on ESC rights.

In line with the development of the right to housing in the United Nations system, the Committee on ESC rights has ordered States Parties through its rulings to provide adequate housing solutions to persons evicted by the owners of the private residences where they lived⁷⁹. In May 2020, the Committee on ESC rights ordered the government of Argentina, through an interim measure, to suspend the eviction decreed by a national court of six families living in Villa 15- Buenos Aires in order to avoid irreparable damage to the affected families⁸⁰.



How to submit a communication to the Committee on ESC rights⁸¹

Any person or group of persons may submit a communication to the Committee on ESC rights on their own behalf or on behalf of another person. It is not necessary to have a lawyer.

The application does not require any special format, although it is recommended to follow the models and guidelines provided by the different Committees. It should include the following:



Recommendations for submitting a communication to the desc committee

- Basic information about the victim (name, nationality, among others). If the communication is submitted on behalf of another person, proof of consent must be provided. The wish that the identity of the applicant and/or the victim be kept confidential must be stated.
- A full, detailed, and chronological description of the facts on which the communication is based, including an explanation of why the events described constitute a violation of the ICESCR⁸².
- Indication of the rights allegedly violated is recommended, as well as remedial measures desired from the State Party.
- Explanation of the remedies exhausted at the local level with the authorities and judges of the State Party, as well as the filing of the complaint in other international entities. Copies of these procedures should be provided.

At any time during the individual communication procedure, and before a final decision, the Committee on ESC rights may facilitate an amicable settlement between the parties. It is important to note that any individual communication to the Committee on ESC rights must be submitted within one year of the exhaustion of domestic remedies, unless it can be proven that the referral of the complaint within that period would not have been possible.

6. Final recommendations on evictions in the context of the COVID-19 health crisis.

On the occasion of the COVID-19 health crisis and in response to the prevention measures ordered by the States, the United Nations Special Rapporteur for Adequate Housing made the following recommendations for immediate adoption by the States Parties in relation to the inhabitants of informal settlements⁸³. The most important recommendations are highlighted below and should be considered when dealing with public authorities and in judicial processes related to the refugee and migrant population during the COVID-19 pandemic.



Recommendations for immediate adoption by states parties regarding inhabitants of informal settlements

- **Suspension and/or prohibition of any procedure that prevents residents of informal settlements from remaining in their homes.**
- **Assistance to strengthen local community structures so that they can participate with local authorities in crisis management and the design of assistance plans for residents of informal settlements.**
- **Ensure the granting of financial relief on rent payments, together with the prohibition of cutting water and electricity services.**
- **Preventive education through campaigns to ensure permanent access to information on COVID-19, health practices, available support, etc. This information should be available through different media and in local languages⁸⁴.**



From top to bottom and left to right: ©UNHCR/ Felipe Irnaldo, ©SaveTheChildren/ Glenna Gordon y ©WFP/ Ana Buitron



Notes

- 1 UN-Habitat (2020). Key messages COVID and Housing. Available at: https://unhabitat.org/sites/default/files/2020/05/spanish_final_un-habitat_key_messagescovid19_and_housing.pdf
- 2 According to the Pact of San José, States must adopt measures to progressively achieve the rights derived from the economic, social and educational, scientific and cultural standards contained in the OAS Charter (Article 26). In this regard, the Annual Report of the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights of the IACHR (REDESCA) (2018) analyzed the situation of the right to housing in different countries of the region and concluded that there are significant challenges in terms of access to housing, informal settlements and forced evictions.
- 3 United Nations (1966). International Covenant on Economic, Social and Cultural Rights (Article 11.1.).
- 4 Committee on ESC rights (1991). General Comment No. 4: The right to adequate housing (Article 11 (1) of the ICESCR).
- 5 Ibid. (para. 8. a.).
- 6 IACHR (2019). Report Forced Migration of Nicaraguan Persons to Costa Rica
- 7 United Nations. Special Rapporteur on the right to adequate housing (2019). A/HRC/40/61 Access to justice for the right to housing. Human Rights Council. Fortieth Session.
- 8 In some judicial systems in the region, judges may rule ultra and extra petita (beyond what was requested or outside what was requested of a judge), in order to expand the guarantee of rights. This is very useful in the context of safeguarding the fundamental rights of the refugee/migrant population from Venezuela, which would allow rulings in favor of their rights to be more innovative and become judicial precedents for protection based on human rights.
- 9 I/A Court H.R., Case of Barbani Duarte et al. v. Uruguay. Merits, Reparations and Costs. Judgment of October 13, 2011. Series C No. 234. I/A Court H.R., Judgment of October 13, 2011. Case of Ruano Torres et al. v. El Salvador. Merits, Reparations and Costs; Judgment of October 5, 2015. Series C No. 3031; Case of Palamara Iribarne v. Chile. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135, para. 178; Case of Chaparro Álvarez and Lapo Íñiguez. Vs. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 17020, para. 152; Case of Vélez Lóor v. Panama. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2010 Series C No. 218, para. 144; Case of Herrera Espinoza et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1, 2016. Series C No. 31621, para. 174.
- 10 Committee on ESC rights (1997). General Comment No. 7: The right to adequate housing (article 11, paragraph 1 of the ICESCR): forced evictions (para. 3).
- 11 According to the Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles), all refugees and internally displaced persons are entitled to restitution of land and property of which they have been arbitrarily or illegally deprived. Principle 2. UN 2005.
- 12 For more information on these elements, see the documents "Eviction Programming: Key Definitions and Concepts" (Available at: <https://www.globalprotectioncluster.org/wp-content/uploads/Key-Concepts-and-Definitions-for-Evictions-Response-Programming.pdf>) and "Standards and criteria for "Dignified Evictions & Departure" (Available at: <https://www.globalprotectioncluster.org/wp-content/uploads/Standards-and-criteria-for-dignified-eviction-departure.pdf>) in the Global Protection Cluster. This defines terms and international standards that ensure no person can be left in a street situation or in a state of vulnerability or human rights violations as a consequence of an eviction.
- 13 United Nations High Commissioner for Human Rights (2000). General Recommendation No. 25.
- 14 IACHR (2019). Compendium on equality and non-discrimination. Inter-American Standards. Available at: <https://www.oas.org/es/cidh/informes/pdfs/Compendio-IgualdadNoDiscriminacion.pdf>
- 15 Case of Valentina Rosendo Cantú et al. vs. Mexico (2010) and Case of González Lluy et al. v. Ecuador (2015), before the Inter-American Court of Human Rights.
- 16 See UNHCR guidance note on Venezuelan nationals: <https://www.refworld.org/es/docid/5ce2d44c4.html>
- 17 United Nations (2010). A/HRC/14/30. Report of the Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living.

- 18 Ibid.
- 19 UNHCR. (2019) Venezuela: Guidance note on international protection considerations for Venezuelans.
- 20 IACHR (2019). Resolution 04 of 2019. Inter-American Principles on the Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons (Principles 38 and 2).
- 21 United Nations (1979). Convention on the Elimination of All Forms of Discrimination against Women. Discrimination against women is defined as any form of distinction or exclusion "based on sex and that has the effect or purpose of impairing or nullifying the recognition, enjoyment and exercising of rights by women" of their human rights in any field (Art. 1).
- 22 International Network for Economic, Social and Cultural Rights. Available at: <https://www.escr-net.org/es/recursos/pagina-informacion-sobre-derecho-humano-mujer-tierra>
- 23 Committee on ESC rights (1997). General Comment No.7: The right to adequate housing (ICESCR Article 11(1): forced evictions).
- 24 Center for Housing Rights and Against Evictions (COHRE) (2006). Evictions in Latin America: The cases of Argentina, Brazil, Colombia and Peru.
- 25 Economic and Social Council. United Nations (2006). Women and adequate housing. Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and the right to non-discrimination in this context.
- 26 IACHR (2015). Report on Violence against LGBTI persons in the Americas (para. 377).
- 27 Latin American Institute for an Alternative Society and Law, ILSA (2006). Women and Economic, Social and Cultural Rights: Tools for identifying, defending and demanding rights in the public sphere in women's terms. Capacities for enforceability (p. 36).
- 28 United Nations. Economic and Social Council (2006). E/CN.4/2006/118. Women and adequate housing (page 26).
- 29 Latin American Institute for an Alternative Society and Law, ILSA (2006). Women and Economic, Social and Cultural Rights: Tools for identifying, defending and demanding rights in the public sphere in women's terms. Capacities for enforceability.
- 30 United Nations. Special Rapporteur on Adequate Housing (2020). 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; United Nations. Special Rapporteur on Adequate Housing (2020). Guidelines for the Implementation of the Right to Adequate Housing: Guideline No. 8: "States should ensure the right of children to adequate housing, inter alia, by applying the principle of the best interests of the child and when appropriate by including children in relevant decision-making processes."
- 31 United Nations High Commissioner for Human Rights and UN Habitat (2010). The right to adequate housing (p. 20).
- 32 Ibid. (p. 21).
- 33 Ibid.
- 34 Ibid.
- 35 Ibid (p. 22).
- 36 United Nations (2010). Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (par. 68).
- 37 United Nations Declaration on the Rights of Indigenous Peoples (2007); ILO Convention 169 (1989); American Convention on Human Rights (1969).
- 38 IACHR (2018). Resolution 07/2018. Precautionary Measure No. 872-17. The IACHR ordered the State of Guatemala to adopt necessary measures to protect the rights to life and safety of indigenous families from the Maya Q'eqchi Community "Nueva Semuy Chacchilla".
- 39 IACHR (2018). Resolution 03 of 2018. Precautionary Measure No. 860-17. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2018/3-18MC860-17-GU.pdf>
- 40 Among others, in Resolution 36/ 2017 the IACHR orders the State of Guatemala to protect the life and personal safety of indigenous settlements in areas protected by the State, taking into account that the shelter did not offer sufficient protection against different risks and exposed them to factors such as a lack of drinking water and basic sanitation.
- 41 United Nations. Special Rapporteur on Adequate Housing (2020). 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 area.



- 42 According to the Brasilia Rules of 2008, which are recognized by the networks of the Ibero-American judicial system as basic standards to guarantee access to justice for people in vulnerable conditions. These are not binding as they do not have the character of legal norms, but are taken into account as a reference point for the formulation of public policy. Available at: <https://bit.ly/2FeRnhj>; MASSIAH, Ernest (2004). Disability and Inclusion: Data, Education, Urban Development and Transportation. Social Inclusion and Economic Development in Latin America. IDB. Available at: <https://bit.ly/2X0H6uV>.
- 43 BERMAN, R. Inclusive development: a universal contribution from disability. WORLD BANK. CRUZ, Israel. (2006). Social exclusion and disability. Universidad del Rosario. Available at: <https://bit.ly/2D6Slud>.
- 44 Constitutional Court of Colombia (2013). Decision T-566 of 2013.
- 45 Committee on ESC rights (1991). General Comment No. 4: The right to adequate housing (Article 11 (1) of the ICESCR).
- 46 United Nations. Office of the Special Rapporteur on Adequate Housing (2008). A/HRC/7/16. Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and the right to non-discrimination.
- 47 Observation No. 7 of 1997 of the Committee on ESC rights specifically establishes these elements that provide guarantees against forced evictions.
- 48 See the individual communications mechanism of the ICESCR in Chapter 5 of this Legal Guide.
- 49 Committee on ESC rights (2017). Communication 5/2015 submitted by Mohamed Ben Djazia. In this case, a Spanish civil court did not assess the possible consequences of this measure on minor children nor the obligation of the Spanish State, as the eviction caused consequences for all members of the family involved.
- 50 To learn about regulations established in 17 countries in the region for the mitigation of impacts on refugees and migrants in the context of COVID-19, visit the tool for best public policy practices developed by the Regional Protection Sector/R4V Platform here: <https://app.powerbi.com/view?r=eyJrjoiMWI3OWQ4NmQtM2M3MS00Nm1LWewYjQtOWU3M-DExMGFhZWJiwiwiCl6ljE1ODgyNjJkLTizZmItNDNiNC1iZDZlWjZTQ5YzhINjE4NiIsImMiOjh9>
- 51 **Organic Humanitarian Support Law (Ecuador):** Suspended the power of the landlord to execute the eviction of tenants for any of the causes contained in the Tenancy Law (Art. 30), during the term of the State of Emergency due to the pandemic and for up to 60 days after the end of the State of Emergency (Art. 4). **Decree 579 of April 15, 2020 (Colombia):** 1) Suspended the order or execution of any eviction of leased real estate ordered by judicial or administrative authorities. **Executive Decree 145 of May 1, 2020 (Modified by Executive Decree 314 of August 7, 2020) (Panama):** 1) All eviction processes for real estate used for housing were suspended during the National State of Emergency (Art. 2); 2) ; 4). The processes for the eviction of tenants who are unable to from real estate for housing use was suspended during the period of the sanitary emergency and for 2 more months following the end of this period (Art. 5); 5) Penalization of landlords who suspend the supply of public services as a way of facilitating the eviction of the tenants of the property (Art. 8). **Law 14.010 of June 10, 2020 (Brazil):** This Law prevents the ordering of evictions of urban properties that are caused, among other reasons, by the non-payment of the fee and termination of the rental contract (Art. 9). This measure was in force until October 30, 2020.
- 52 United Nations (March 2020). Guidance Note COVID-19 - Protecting Renters and Mortgage Payers.
- 53 In some countries, such as Colombia, these crimes may be aggravated by the vulnerability of the refugee or migrant.
- 54 United Nations (1998). Guiding Principles on Internal Displacement.
- 55 In the context of the COVID-19 pandemic, unused public spaces were identified by refugees and migrants as a precarious housing alternative that in the absence of adequate housing allowed them to protect themselves from the risks of infection.
- 56 Rulings T-527 of 2011 and T-417 of 2015 of the Colombian Constitutional Court establish the application of the principle of legitimate trust to public assets.
- 57 In judgments T-349 of 2012, T-417 of 2015 and T- 527 of 2011 of the Colombian Constitutional Court, it was noted that for cases of the recovery of property for public or fiscal use inhabited by human groups, local authorities must adopt appropriate measures for the protection of fundamental rights, such as the observance of due process and the relocation or resettlement of dwellings.
- 58 Constitutional Court of Colombia. Rulings T-264 of 2012 and T-088 of 2011: Reiterates the obligation of the State in relation to displaced persons. This obligation involves providing adequate temporary shelters until they find other stable options for decent housing. Decision T - 025 of 2004: It was stated that basic housing or shelter, as an expression of the fundamental right to the right to life, are part of the minimum benefits that must be provide by the State to displaced persons.
- 59 In Brazil the government established a shelter program for refugees and migrants. In Bogota, Colombia, the City Council provided fixed and mobile housing spaces for the population at risk of homelessness (elderly adults, pregnant mothers and children and adolescents) in order to comply with social distancing measures for the duration of the State of Emergency caused by COVID-19 (Decree 093 of March 25, 2020).

- 60 ILO Convention 169 has been signed in the region by: Colombia, Ecuador, Panama, Brazil, Peru, Venezuela, Argentina and Chile. The interpretation of Article 21 of the American Convention on Human Rights that focuses on the protection of property made by the Inter-American Court of Human Rights includes communal ownership of territories they have traditionally inhabited. This interpretation has been developed by the Inter-American Court of Human Rights in several judgments, such as the Mayagna (Sumo) Awas Tingni Community v. Nicaragua (2001); Kichwa De Sarayaku Indigenous People v. Ecuador (2012); Yakye Axa Indigenous Community v. Paraguay (2005), etc.
- 61 ILO (1989). Convention 169 (Art. 6).
- 62 IOM (2018). Legal Aspects of Care for Indigenous Migrants from Venezuela to Brazil.
- 63 This principle can be found in ILO Convention 169, the United Nations Declaration on the Rights of Indigenous Peoples and the American Declaration on the Rights of Indigenous Peoples.
- 64 United Nations (1998). Guiding Principles on Internal Displacement (Principles 9 and 11).
- 65 United Nations. Human Rights Council. Human Rights Treaty Bodies. Individual Communications. Available at: <https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#ICESCR>
- 66 Unit for the Assistance and Integrated Reparations of Victims (Colombia) (2013). Characterization instructions.
- 67 Ibid.
- 68 United Nations. Special Rapporteur on the right to adequate housing. (2020). Guidance Note COVID-19- Protecting Renters and Mortgage Payers.
- 69 For related experiences, see the Mapping of Good Community Practices on Housing/Land Rental Mediation in this Regional Toolbox.
- 70 United Nations (2012). United Nations Guidelines for Effective Mediation.
- 71 Municipal Public Defender Offices have the constitutional function of guarding and promoting human rights and protecting the public interest (Art. 118 of the Political Constitution of Colombia). This function is established in Law 136 of 1994. In accordance with the above, and in relation to the right to housing, in addition to the mediation service the Public Defender Offices offer guidance and accompaniment for eviction proceedings and undertake legal action to prevent mass evictions ordered without any observance of constitutional guarantees.
- 72 Moreno Moreno, J. (2014) Mediation in the field of immigration and intercultural coexistence. Social Action and Research Journal, No. 1, Extra, 2006.
- 73 Committee on ESC rights (1997). General Comment No. 7: The right to adequate housing (Article 11(1) of the ICESCR): Forced evictions (para. 15).
- 74 Ibid. (para. 16).
- 75 IACHR (2009). IACHR Rules of Procedure (Art. 25).
- 76 IACHR Precautionary Measure Resolutions 07 of 2018, 03 of 2018 and 36 of 2017.
- 77 IACHR. Fact sheet for requesting precautionary measures from the IACHR. Available at: http://www.oas.org/es/cidh/docs/pdfs/2020/FactSheets_MedidasCautelares-ES.pdf
- 78 United Nations. Human Rights Council. Human Rights Treaty Bodies - Individual Communications. Available at: <https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#ICESCR>
- 79 Committee on ESC rights (2018). Views E/C.12/67/D/52/2018 and E/C.12/66/D/37/2018.
- 80 Committee on ESC rights (2020). Provisional Measure against Communication 187/2020.
- 81 United Nations. Human Rights Council. Human Rights Treaty Bodies - Individual Communications. Available at: <https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#ICESCR> A thorough review of this document is recommended.
- 82 See the recommendations on the presentation of the facts in a request for precautionary measures before the IACHR contained in this Legal Guide.
- 83 United Nations. Special Rapporteur on the right to adequate housing. (2020). Guidance Note COVID-19 - Protecting Residents of Informal Settlements.
- 84 United Nations. Special Rapporteur on the right to adequate housing. (2020). Guidance Note COVID-19 - Protecting Renters and Mortgage Payers.

