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Committee on Economic, Social and Cultural Rights

Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, concerning communications Nos. 226/2021 and 227/2021*, **

Communication submitted by:	Mr. Hamid Saydawi and Mr. Masir Farah (both represented by counsel, Mr. Stefano Portelli)
Alleged victims:	The authors
State party:	Italy
Date of communication:	10 September and 12 September 2021 (initial submissions)
Date of adoption of Views:	16 February 2024
Subject matter:	Eviction of two families from a dwelling they were occupying without a legal title
Procedural issues	Failure to exhaust domestic remedies
Substantive issue:	Right to adequate housing
Article of the Covenant:	11 (1)
Articles of the Optional Protocol:	2, 3 (1) and 5

1.1 The authors of the communications, submitted on 10 September and 12 September 2021 respectively, are Hamid Saydawi, born on 4 April 1963 and Masir Farah, born on 10 October 1975. Both authors are of Moroccan nationality. The Optional Protocol entered into force for the State party on 20 February 2015. The authors are represented by counsel.

1.2 On 10 September and 12 September 2021, the Committee, acting through its Working Group on Communications, registered the communications and asked the State party to suspend the eviction of the authors and their families while the communications were pending before the Committee or to provide them with alternative housing suited to their needs in a bid to avoid causing irreparable harm to them or their families.

* Adopted by the Committee at its seventy-fifth session (12 February–1 March 2024).

** The following members of the Committee participated in the examination of the communication: Aslan Abashidze, Mohamed Ezzeldin Abdel-Moneim, Nadir Adilov, Asraf Ally Caunhye, Laura-Maria Crăciunean-Tatu, Peters Sunday Omologbe Emuze, Santiago Manuel Fiorio Vaesken, Ludovic Hennebel, Joo-Young Lee, Karla Vanessa Lemus de Vásquez, Mikel Mancisidor de la Fuente, Seree Nonthasoot, Lydia Carmelita Ravenberg, Julieta Rossi, Preeti Saran, Shen Yongxiang and Michael Windfuhr. Pursuant to rule 23 of the rules of procedure under the Optional Protocol, Mohammed Amarti did not participate in the examination of the communication.

A. Summary of the information and arguments submitted by the parties

Facts as presented by the authors

General facts common to the cases

2.1 The authors claim that they were living in a block of five small, "neglected" houses close to the railroad in Via Latino Silvio N. 37, Rome, Italy. They contend that the housing block was built by the US army during the war and that, before their arrival and since the death of the previous occupiers a decade before, the houses were being used as a site for drug smuggling and consumption. The housing block was restored and renovated by the authors and their neighbours, a group of five families of North African migrant workers, who refurbished the dwellings. The authors note that they had a considerable emotional attachment to the houses and invested a lot of work and money in the renovation works. The group of neighbours was very close, provided mutual support and included 24 persons, seven of which minors.

2.2 Though most of the residents had registered the houses as their residence, they never managed to obtain a property title. According to the information the residents had, the houses had no formal owner, and the local authorities informally informed them that they could remain in the housing units even if it was impossible to provide them with a formal title. The authors contend that the authorities also expressed informal appreciation for the fact that the renovations of the residential block had brought security back to the area.

2.3 On 14 October 2008, the authors received a notification from the Italian railway company (*Gruppo Ferrovie Dello Stato*) informing that the company had obtained the property of the housing block and would evict the inhabitants, claiming the housing units were in a ruinous state. The trial before the Civil Court of Rome started on 27 October 2008, and the company requested the eviction of the families and the payment of a fine for the illegal occupation of the houses. The complaint was dismissed and archived by the Civil Court of Rome on 22 September 2009, which noted that the authors had been inhabiting the houses for a long time before the company obtained the property and determined that the authors had not committed any criminal offence.

2.4 In 2010, an inspection by the Italian firefighters concluded that the houses were in a bad state and that the residents had to be evicted. The inspectors requested the City Council of Rome to provide the families with proper housing. This request was reportedly forwarded to the Social Services on 14 April 2011, but without any result.

2.5 On 5 April 2011, the authors answered another request for eviction by the railway company arguing that the houses were in a good state and that they had been inhabited for many years before the request for eviction while highlighting that the company had tolerated the use of the housing without requesting any fee nor displaying the intention of renting it or using it in any way. On 25 November 2012, the 7th section of the Civil Court of Rome issued a judgment in which it requested the vacation of the houses and imposed on the residents the obligation to pay a fine and cover the legal expenses for a total amount of 37,493.74 EUROS. However, in the following years, the authors did not receive any further notification of eviction, and were not offered any alternative housing. They thus decided to continue residing in the houses and resumed the renovation works.

2.6 On 10 February 2021, the authors were officially notified that they had to vacate the houses, as an implementation of the decision taken by the Civil Court of Rome on 25 November 2012. On 16 February 2021, the authors requested emergency housing to the City Council. A firm eviction order was pronounced on 15 March 2021 by the Civil Court of Rome, but the authors' counsel decided not to challenge it, since an appeal to a firm sentence without providing new evidence would have certainly been rejected and would condemn the authors to a further payment of legal expenses.

2.7 On 24 May, 27 June and 27 July 2021, judicial officers tried to visit the houses to implement the eviction, but they were unable to do so given the support provided to the authors by housing activists and the other families. During the last visit, a judiciary officer

communicated orally that the next visit would take place on 16 September 2021, but did not provide any written document.

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2.8 Mr. Saydawi arrived in Italy in 1988 and has been living in the house located in via Latino Silvio n. 37 with his wife and three children since 2000. He was earning approximately 1,778 EUR per month prior to the COVID-19 lockdown, but his full employment contract changed to an occasional collaboration with his employer following a restructuring procedure in the light of the COVID pandemic, which resulted in an income amounting to about half of what he previously earned. The author estimates that he spent approximately 25,000 EUR for the first parts of the renovations of the housing block, in addition to the manual informal work he undertook.

2.9 On 23 March 2011, the counsel of Mr. Saydawi wrote a letter to the railway company on behalf of the author and two other families, informing the company that they would be available for a regularization of their housing situation by becoming formal tenants. In addition to the requests for social housing mentioned in the general part of the facts, Mr. Saydawi filed another request for public housing to the Housing Department of the City Council of Rome on 9 June 2011. The author's request for emergency housing of 16 February 2021 was denied on 24 February 2021, and the author was referred by the City Council of Rome to a phone number of an organization that provides support to persons in situation of homelessness. On 18 June 2021, the author requested another meeting with the social services to obtain social housing. Mr. Saydawi's children are adults and economically independent, but due to the economic crisis caused by the COVID pandemic, they are unable to help their parents financially. This would thus imply that he and his wife would have no other housing alternatives if they were to be evicted from the house, and would become homeless. The only alternative that the authorities offered was to separate the men and the women, with the women being housed in emergency centres and the men remaining homeless, which they did not consider to be a viable option.

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2.10 Mr. Farah has been living in the house located in via Latino Silvio n. 37 since 2005. At the time of the presentation of the communication, he was living in the house with his 73-year-old mother with disabilities, his older brother who recently underwent heart surgery, his wife, and his two children then aged 8 and 5 years. Mr. Farah has been working as a fish seller in a public market in Rome for the past 13 years. Even though his mother requested a pension, and his wife is the formal title holder of the market stall he works in, at the time of the presentation of the communication he was the only person with an income in the family. His brother previously worked as a shoe seller at public markets but lost his economic activity as he was hospitalized and underwent heart surgery. The economic indicator of the family unit is 2,350 EUR per year.

2.11 In spite of the requests for emergency housing filed on 16 February 2021 (see para. 2.6 above), neither the authorities nor the railway company offered any solution. The only alternative that the authorities offered was to separate the men from the women and the children, with the women and children being housed in emergency centres and the men remaining homeless, which they did not consider to be a viable option. Mr. Farah cannot seek shelter in the house of any relative or friends, and fears that an eviction and the ensuing homelessness would make him unable to provide proper parental care to his children. He adds that a possible eviction will cause an irreparable damage for the whole family, putting at risk the life of his mother and the health of his brother while creating a trauma for the children, whose basic rights to housing, health, schooling and parental care would be disrupted.

Complaint

3.1 The authors allege that the Italian authorities are not protecting their rights under article 11 of the Covenant and they contend that the situations of defencelessness with which they are faced is a violation of their rights enshrined in the Covenant. They note that the national courts ruled in favour of the claim of the railway company to regain control of a

property that it had neglected for many years, instead of guaranteeing the right to housing, integrity and dignity to socially vulnerable families.

3.2 The authors add that the uncertain housing situation they suffered for 16 years, the risk of a division of the family in emergency shelters and the threat of an eviction would also result in a violation of article 17 of the International Covenant on Civil and Political Rights.

3.3 The authors claim that they have exhausted domestic remedies, as they opposed the different judicial decisions leading to their eviction, with the exception of the decision of 15 March 2021, as it was deemed that an appeal against a firm sentence without providing any new evidence would have certainly been rejected and would have led to the further payment of legal expenses. They note that they have requested social housing on several instances and that there are no other domestic remedies they can pursue to stop their eviction.

State party's observations on admissibility and the merits

General remarks and comments on admissibility common to the cases

4.1 On 15 March 2022, the State party submitted its observations on the admissibility and the merits of the communications.

4.2 The State party notes that the Constitutional Court deals only with infringements of the 1948 Constitution, and can act either *ex oficio*, by means of the prosecutor, or upon request of the plaintiff or defendant. It adds that when the Court considers that an act is unconstitutional, this evaluation leads to a suspension of the *a quo* proceeding. The State party mentions that, pursuant to article 134 of the Constitution, the Constitutional Court decides on disputes concerning: i) constitutionality of laws and acts with the force of law adopted by the State or Regions; ii) the allocation of powers between branches of Government, within the State, between the State and the Regions, and between Regions; iii) accusations raised against the Head of State in accordance with the Constitution. The State party notes that more generally, the Constitutional Court decides on the validity of legislation, its interpretation and on the question whether its implementation, in form and substance, is in line with the Constitution. It states that when the Court declares a law or an act with the force of law unconstitutional, the norm ceases its force by the day after the publication of the decision.

4.3 Regarding the admissibility of the communications, the State party contends that the authors have failed to exhaust domestic remedies, signalling that remedies must be available, effective and sufficient or adequate. The State party emphasizes that the rule on non-exhaustion becomes of relevance when remedies are unavailable, when there is a lack of effectiveness or adequacy and when there is a denial of justice or discretionary remedies that apply. The State party argues that contrary to what is indicated in the communication, all the above does not apply to the present cases.[1]

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4.4 Regarding the communication submitted by Mr. Saydawi, the State party contends that during a meeting of the Provincial Committee on order and public Safety organized on 17 September 2021, it emerged that following an asset assessment, the family of the author, living in accommodation No. 1 of the housing block in Via Silvio Latino N.37, had an annual

[1] The State party refers to: The Rule of Prior Exhaustion of Local Remedies in the International Law Doctrine and Its application in the Specific Context of Human Rights Protection, EUI Working Paper, 2007/02, D'Ascoli Scheer 2007 (p. 13); Exhaustion of Local Remedies in International Investment Law, IISD Best Practices Series – January 2017, Martin Dietrich Brauch. The State party notes that the origins of the ELR rule lie in the context of customary international law following the logic that, "before a state may exercise diplomatic protection, the foreign national must have sought redress in the host state's domestic legal system" (Newcombe & Paradell, 2009, p. 6); The Rule of Prior Exhaustion of Domestic Remedies: Theory and Practice in International Human Rights Procedures; Cesare P. R. Romano; Report of the Human Rights Committee (2010–2011), A/66/40 (Vol. I), para. 99; Human Rights and Humanitarian Norms as Customary Law, T. MERON, Clarendon Press, Oxford, 1989; "La Regola del Previo Esaurimento dei Ricorsi Interni in Tema di Responsabilità Internazionale", R. Ago, 3 Archivio di Diritto Pubblico (1938).

income of 60,000 EUROS. The State party argues that for the reasons mentioned above in the general remarks, as well as the comments on the admissibility and the merits, the communication is not admissible.

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4.5 In the context of the communication presented by Mr. Farah, the State party informs that the Service of the Municipality of Rome, the so-called *Sala Operativa Sociale*, in the past had been proposing emergency-related solutions to the persons living in Via Silvio Latino 37, and it adds that all proposals were refused by the author given their temporary nature. The State party further notes that during the COVID-19 pandemic, amongst other relevant measures, the so-called emergency income was activated, and that Italy introduced the so-called citizenship income, which was acknowledged during the State party's UPR review in November 2019.[2] The State party highlights that amongst other relevant measures, it introduced the Single and Universal Allowance, being an economic support to families, allocated for each dependent child until the age of 21 if certain conditions are met, and without age limits for children with disabilities. The State party argues that for the reasons mentioned above in the general remarks, as well as the comments on the admissibility and the merits, the communication is groundless and thus not admissible.

Comments from the authors on the State party's observations on admissibility and the merits

General remarks and comments on admissibility common to the cases

5.1 On 21 April 2023 and 12 June 2022, the authors submitted comments on the State party's observations on the admissibility and the merits of cases 226/2021 and 227/2021 respectively.

5.2 The authors reject the claim that the communication is inadmissible due to the non-exhaustion of domestic remedies, contend that the State party is acting in bad faith, and consider that the Inter-ministerial Committee for Human Rights (*Commissione interministeriale per I Dritti Umani,* hereinafter (CIDU)), which prepared the State party's observations, is not the adequate body to provide observations on their cases as it is not an independent institution from the executive branch.

5.3 The authors highlight that the domestic remedies that complainants have to exhaust have to be available and effective, and the judgment on their exhaustion shall take into account the specific circumstances of each individual case.[3] They contend that the application of the requirement of exhaustion of domestic remedies is subject to a degree of flexibility and should not constitute an unjustified impediment to access international remedies.

5.4 The authors contend that, as the great majority of vulnerable people who are threatened with evictions in the State party, they did not lodge an appeal against their eviction. They content that this is due to a reform of the Judiciary code that made appeals extremely expensive and not covered by the free justice system, which thus makes them virtually inaccessible for people with scarce economic resources that are already indebted. The authors argue that, by means of Decree n.55 of 10 March 2014, the Italian Ministry of Justice introduced new parameters for the calculation of legal expenses for succumbing parties in civil trials. These parameters, which were later modified by a decree on 8 March 2018, are based on the value of the trial itself, and may be raised or lowered according to the Judge's decision. However, an order of the Corte Suprema di Cassazione[4] affirms that, unless there are distinctive reasons, the expenses cannot significantly differ from the professional

[2] See: Report of the Working Group on the Universal Periodic Review – Italy, 27 December 2019, A/HRC/43/4, available at: https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F43%2F4. For the supporting documents presented during the review, see: https://www.ohchr.org/en/hr-bodies/upr/it-index.

[3] The authors refer to: International Justice Resource Center (IJRC), 2017, Exhaustion of domestic remedies in the United Nation System, retrieved at https://ijrcenter.org/wp-content/uploads/2018/04/8.-Exhaustion-of-Domestic-Remedies-UN-Treaty-Bodies.pdf, May 5th, 2022.

[4] The authors refer to Corte Suprema di Cassazione, decision 8146, 23 April 2020.

fares set by the order of lawyers. The authors thus contend that to be condemned to the payment of legal expenses represents a heavy burden for common citizens as people suffering a violation of their right to housing generally arrive at Court already weakened in their financial capacity, and the condemnation to pay legal expenses always represents a very heavy burden. The authors note that this reform also applies to people that have the right to free legal defence. They highlight that in practice, the risk of being condemned to the payment of amounts that may easily reach 5,000 EUROS leads people with few economic resources, often already indebted with their landlords, to renounce to their right to legal defence and most lawyers recommend people to not lodge appeals that have no chance to be won, to avoid incurring into additional expenses.

5.5 The authors argue that if the State party objects to the admissibility of a communication on the basis that domestic remedies have not been exhausted, it bears the burden of proving that remedies exist that are available and effective. They note however that the letter containing the State party's observations is a standard letter that has already been submitted as a part of the response to different individual communications. The authors note that the State party's submission contains generic references to the Italian Judicial system, but no substantial claim about which specific domestic remedy they could have used.

5.6 The authors note that the State party refers to the Constitutional Court, which could imply that the domestic remedy they should have used is this judicial body. They contend, however, that only judges can file a remedy with this Court, which has the institutional role of checking the validity of laws and acts, regulating the allocation of powers between different branches of the government, and acting as an arbiter in accusations against the President of the Republic. The authors iterate that the role of the Constitutional Court is not to respond to individual claims forwarded by private citizens.[5] They claim that it is thus not possible for private citizens, such as them, to recur to this Court. The authors argue that the State party is fully aware of the abovementioned arguments, as well as of the lack of resources they have as persons in vulnerable economic situations who are excluded from the allocation of affordable housing and subject to a threat of irreparable harm and a potential violation of their rights. The authors thus contend that it is not reasonable to suggest that they recur to the highest organ of the State, an action that would require an intermediation of the judge, which they are unable to pursue. The authors argue that this is an argument that is inconsistent with the obligation of the State party to interpret the treaty in good faith, as enshrined in article 26 of the Vienna Convention on the Law of Treaties.

5.7 The authors allege that all domestic remedies they could reasonably apply were exhausted. They highlight the dire situation of housing shortage in the Sate party, and note that a report by the European Union issued in 2015 already expressed concern about housing rights and evictions. The authors contend that this situation has worsened in the subsequent years and became endemic as an effect of the COVID-19 pandemic and the measures taken by the State party in this context.

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5.8 In his comments, Mr. Saydawi notes that the claim that he earns 60,000 EUROS annually is incorrect. He explains that the contract with the cultural association of Moroccan imams in Europe of which he was an employee, had switched to a precarious relationship of "working on call" since approximately two years, which implied that he was earning around one third of his previous salary. He notes that the current index of his economic situation is slightly more than 10,000 EUROs annually, which does not allow him to rent a house in the free market or to access temporary housing.[6] The author claims that it is another proof of bad

[5] The authors refer to the public website of the Constitutional Court, which reportedly states that: "the Constituent Assembly operated a basic choice regarding the general system to control the constitutional validity of laws, excluding the possibility that whatever subject can directly contest the laws in front of the Court, and dictating instead that the doubts about the constitutional validity of laws can only be raised in the occasion of their application by common judges", and that "the roads to access to the Court are as many as there are common judges, of all levels". See: https://cortecostituzionale.it/jsp/consulta/istituzioni/lacorte_presentazioni.do

[6] The author submits a document that is reportedly issued by the State institution ISEE and indicates an economic indicator of 10,726.63 EUROS.

faith given that the Social worker of the CIDU he was requested to meet, transmitted incorrect information instead of solving the problem, in an attempt to discharge the State party from the fulfilment of its obligations towards its most vulnerable citizens.

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5.9 Referring to the State party's comments on the merits, Mr. Farah contends that the mention of the extraordinary and non-extraordinary subsidies to support his family are not relevant for the individual communication. He notes that he is a working person who is unable to support a family of six and pay rent with only one income. He points out that the subsidies referred to by the State party do not provide valid or permanent solutions to prevent harm in case of an eviction. The author specifies that the COVID-19 emergency income expired in December 2020 and was not available when the communication was submitted in September 2021. He notes that to request citizenship income, he would be required to leave his job. The author argues that the Single and Universal Allowance, which has just been established by the Italian government and includes a subsidy of 175 EUROS for each child, can certainly contribute to the economy of the family, but would not avoid the risks of forced eviction for a family of six persons. The author contends that temporary emergency-related solutions such as those mentioned in the State party's response do not guarantee respect for article 11 of the Covenant, since they all entail the division of the family and offer no permanent remedy to the risk of irreparable harm.

B. Committee's consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 10 (2) of its rules of procedure under the Optional Protocol, whether or not the communication is admissible.

6.2 The Committee is competent, *ratione materiae*, to consider allegations of a violation of any of the rights set forth in the International Covenant on Economic, Social and Cultural Rights. The Committee therefore declares the authors' claims under article 17 of the International Covenant on Civil and Political Rights incompatible with the provisions of the Covenant pursuant to article 3, paragraph 2 (d), of the Optional Protocol.[7]

6.3 The Committee recalls that article 3 (1) of the Optional Protocol precludes it from considering a communication unless it has ascertained that all available domestic remedies have been exhausted. The Committee takes note of the State party's argument that the principle of exhaustion of domestic remedies has not been respected in the individual communications under examination.[8] The Committee equally takes note of the authors' contention that the domestic remedies must be available and effective and of the claim that if a State party objects to the admissibility of a communication on the basis of the argument that domestic remedies have not been exhausted, it bears the burden of proving that remedies exist that are available and effective.

6.4 The Committee takes note of the authors' uncontested allegations that an appeal against a firm sentence and eviction order of 15 March 2021 had no prospect of success given the need to present new evidence and that such an appeal would impose on them an undue financial burden given the need to cover judicial expenses (see paras. 2.6 and 3.3. above). The Committee further observes that the State party refers in a generic manner to the existence of a Constitutional Court in the State party and to the fact that the principle of exhaustion of domestic remedies has not been respected. The State party fails to identify however, what remedies would have been effective and accessible *in casu*, in particular in light of the authors' arguments that a constitutional challenge would be inaccessible to individuals. The Committee recalls its previous jurisprudence stating that a State party raising an objection on admissibility on the grounds of non-exhaustion of domestic remedies must prove that the author of the communication has not exhausted available and effective remedies capable of redressing the alleged violation.[9] The Committee considers that if a State

[7] See for example *V.T.F. and A.F.L v. Spain* (E/C.12/56/D/6/2015), para. 4.2.
[8] See para. 4.6.
[9] *Ziablitsev v. France* (E/C.12/71/D/176/2020), para. 6.6.

party argues for inadmissibility on the ground of non-exhaustion of local remedies, it must identify which remedies should have been exhausted, showing that they are appropriate and effective,[10] which it failed to do in the present communications. The Committee thus considers that article 3 (1) of the Optional Protocol is not an obstacle to the admissibility of the present communications.

6.5 The Committee notes that the communications meet the other admissibility requirements under articles 2 and 3 of the Optional Protocol and, accordingly, declares the communications admissible and proceeds to their consideration on the merits.

C. Committee's consideration of the merits

Facts and legal issues

7.1 The Committee has considered the present communication, taking into account all the information provided to it, in accordance with the provisions of article 8 of the Optional Protocol.

7.2 The Committee will proceed to consider which facts it deems established and relevant to the complaints.

7.3 At the time of the submission of the communications, the authors had been living in two housing units with their families for 16 to 20 years without a legal title. They had renovated the houses and registered their residence. The State party authorities were aware of the authors' presence in and renovations of the housing block, which they condoned.

7.4 Following the acquisition of the houses by a company in 2008, judicial proceedings were initiated to request the eviction of the occupants, and on 25 November 2012, the authors were sentenced by a civil court to vacate the houses and pay a fine. However, it was not until 15 March 2021 that a firm eviction order was pronounced against the authors.

7.5 The authors do not have sufficient financial means to find an adequate alternative housing option on the private market. They have requested social housing in 2021, and the authorities were aware of the authors' need for alternative housing since 2011The only alternative offered by the State party consisted of temporary emergency shelter, which would have led to a separation of the families, by separating the men from the women.

7.6 The authors claim that evicting them and their families without alternative and adequate accommodation would amount to a violation of their right to adequate housing under article 11 (1) of the Covenant.

7.7 In the light of the Committee's determination of the relevant facts and the parties' submissions, the issue raised by the communication is the following: whether or not the judicial decision to evict the authors and their families without making provision for a consultation on and review of housing alternatives or, in the final instance, ensuring that the author had alternative accommodation when the eviction was ordered is a violation of the right to adequate housing enshrined in article 11 (1) of the Covenant. To make this determination, the Committee will begin by returning to its jurisprudence on protection against forced eviction. It will then consider the eviction of the authors and their families and address the issues raised in the communication.

Protection against forced eviction

8.1 The human right to adequate housing is a fundamental right of central importance for the enjoyment of all economic, social and cultural rights and of other civil and political rights.[11] The right to housing should be ensured to all persons irrespective of income or access to economic resources,[12] and States parties must take whatever steps are necessary for that purpose, to the maximum of their available resources.[13]

[10] *I.D.G. v. Spain* (E/C.12/55/D/002/2014), para. 9.5.
[11] General comment No. 4 (1991), para. 1.
[12] Ibid., para. 7.
[13] Ibid., para. 12.

8.2 Forced evictions are *prima facie* incompatible with the Covenant and can be justified only in the most exceptional circumstances.[14] The relevant authorities must ensure that they are carried out in accordance with legislation that is compatible with the Covenant and in accordance with the general principles of reasonableness and of the proportionality of the legitimate objective of the eviction to its consequences for the evicted persons.[15] This obligation flows from the interpretation of the State party's obligations under article 2 (1) of the Covenant, read in conjunction with article 11, and in accordance with the requirements of article 4, which stipulates the conditions under which such limitations on the enjoyment of the rights under the Covenant are permitted.[16]

8.3 For an eviction to be justifiable, it must thus meet a number of requirements provided for in article 4. First, the limitation of the right to adequate housing must be determined by law. Second, it must promote general welfare in a democratic society. Third, it must be suited to the legitimate purpose cited. Fourth, the limitation must be necessary, in the sense that if various means of achieving the goal pursued could reasonably be expected to succeed, the one that interferes least with the right must be used. Lastly, the benefits of the limitation in promoting general welfare must outweigh the impact on the enjoyment of the right being limited. The more serious the impact on the right enshrined in the Covenant, the greater the scrutiny that must be given to the grounds invoked for such a limitation.[17] The availability of adequate alternative housing, the personal circumstances of the occupants and their dependants and their cooperation with the authorities in seeking suitable solutions are crucial factors in such an analysis. Moreover, a distinction inevitably needs to be made between an eviction from properties belonging to individuals who need them as a home or to provide vital income and properties belonging to financial institutions or other entities.[18] The State party will therefore be committing a violation of the right to adequate housing if it stipulates that a person who is occupying a property without legal title, must be evicted immediately irrespective of the circumstances in which the eviction order is to be carried out.[19] The assessment of the proportionality of the measure must be carried out by a judicial or other impartial and independent authority with the power to order the cessation of the violation and to provide an effective remedy. This authority must ascertain whether the eviction is compatible with the Covenant, including with regard to the elements of the proportionality test required by article 4 of the Covenant as described above.[20] However, the principles of reasonableness and proportionality might make it necessary to stay or postpone the eviction order so as to avoid subjecting the evicted persons to destitution or violations of other rights enshrined in the Covenant. An eviction order may also depend on other factors, such as an obligation for the administrative authorities to step in to help the occupants with a view to mitigating the consequences of the eviction.[21]

8.4 In addition, there must not be alternative measures or measures that involve less interference with the right to housing, and the persons concerned must not remain in or be exposed to a situation constituting a violation of other Covenant or human rights.[22]

8.5 The procedural protections that should be afforded in relation to eviction include: (a) an opportunity for genuine consultation on alternative accommodation with those affected, and, if a lack of resources means that there are no viable alternatives, requiring the administrative authorities to present the available options with a view to ensuring that the eviction will not leave anyone homeless; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) provision, in reasonable time, of information on the proposed evictions, and, where applicable, on the alternative purpose for

[14] Ibid., para. 18, and general comment No. 7 (1997), para. 1.
[15] See inter alia *Ben Djazia and Bellili v. Spain* (E/C.12/61/D/5/2015), para. 13.4; and *Vázquez Guerreiro v Spain* (E/C.12/74/D/70/2018), para. 8.2.
[16] See inter alia *Gómez-Limón Pardo v. Spain* (E/C.12/67/D/52/2018), para. 9.4; and *Vázquez Guerreiro v Spain,* para. 8.2.
[17] Vázquez Guerreiro v Spain, para. 8.3.
[18] *López Albán v. Spain* (E/C.12/66/D/37/2018), para. 11.5.
[19] Ibid., para. 11.7.
[20] Ibid., 11.6.
[21] Ibid., para. 11.5.
[22] *Ben Djazia and Bellili v. Spain* (E/C.12/61/D/5/2015), para. 15.1.

which the land or housing is to be used, to all those affected; (d) especially where groups of people are involved, the presence of government officials or their representatives during an eviction; (e) proper identification of all persons carrying out the eviction; (f) no execution of eviction orders in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies to challenge the eviction; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.[23]

8.6 States have an obligation to consider all alternatives to eviction, never to proceed to an eviction if doing so will leave anyone homeless and to ensure that those affected are adequately consulted. Forced eviction as a punitive measure is also inconsistent with the norms of the Covenant.[24] In this regard, the Committee notes that public policies or legislative measures that criminalize individuals or groups of individuals on the basis of their housing situation may be discriminatory and contrary to the right to adequate housing, as well as contrary to other obligations of States parties contained in the Covenant, in particular when they affect groups in situations of vulnerability.[25] The criminalization of a social issue, such as homelessness, constitutes a disproportionate response by the State that does not serve the intended purpose. Criminal law should be applied as a last resort. The State party should seek to respond in other, less harmful, ways that address the problem of the housing shortage and the limited possibilities for people of limited means to have access to decent housing, which is the underlying problem that often lies behind the illegal occupation of houses. The Committee considers that States parties should ensure an effective and adequate remedy to challenge forced evictions and criminalisation of those who lack access to adequate housing or live in illegal settlements.[26]

8.7 The Committee further recalls that State obligations with regard to the right to housing should be interpreted together with all other human rights obligations and, in particular, in the context of eviction, with the obligation to provide the family with the widest possible protection (art. 10 (1) of the Covenant). The obligation of States parties to provide, to the maximum of their available resources, alternative accommodation for evicted persons who need it includes the protection of the family unit, especially when the persons are responsible for the care and education of dependent children.

The state's duty to provide alternative housing in case of need

9.1 Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.[27] The State party has a duty to take reasonable measures to provide alternative housing to persons who are left homeless as a result of eviction, irrespective of whether the eviction is initiated by its authorities or by private individuals such as the owner of the property.[28] In the event that a person is evicted from his or her home without the State party's granting or guaranteeing alternative accommodation, the State party must demonstrate that it has considered the specific circumstances of the case and that, despite having taken all reasonable measures, to the maximum of its available resources, it has been unable to uphold the right to housing of the person concerned.[29] The information provided by the State party should enable the Committee to consider the reasonableness of the measures taken in accordance with article 8 (4) of the Optional Protocol.[30]

[23] General comment No. 7 (1997), para. 15.
[24] Ibid., para. 12.
[25] A/HCR/49/48, par. 47. See also: *Vázquez Guerreiro v. Spain*, para. 8.8.
[26] A/HRC/40/61, pars. 41 to 42.
[27] General comment No. 7 (1997), para. 16.
[28] *Ben Djazia and Bellili v. Spain* (E/C.12/61/D/5/2015), para. 15.2.
[29] Ibid., para. 15.5.
[30] Ibid., para. 15.5. See also: *Vázquez Guerreiro v. Spain* (E/C.12/74/D/70/2018), para. 9.1.

9.2 States parties may choose a variety of policies for this purpose.[31] Any steps taken, however, should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant.[32]

9.3 Alternative housing must be adequate. While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context.[33] They include the following: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; a location in a healthy environment that allows access to public and social services (education, employment and health care); and cultural adequacy, to ensure that expressions of cultural identity and diversity are respected.[34]

9.4 In certain circumstances, States parties may be able to demonstrate that, despite having made every effort, to the maximum of available resources, it has been impossible to offer a permanent, alternative residence to an evicted person who needs alternative accommodation. In such circumstances, temporary accommodation that does not meet all the requirements of an adequate alternative dwelling may be used. However, States must endeavour to ensure that the temporary accommodation protects the human dignity of the persons evicted, meets all safety and security requirements and does not become a permanent solution, but is a step towards obtaining adequate housing. It must also take account of the right of members of a family not to be separated[35] and to enjoy a reasonable level of privacy.[36]

Analysis of the proportionality of the authors' eviction

10.1 The Committee notes that the authors did not have any legal title to regularize their occupancy of the houses. What must be ascertained is whether the eviction of the authors and their families was necessary and proportionate to the objective pursued and whether the State party took the consequences of evicting them into account.

10.2 As mentioned in paragraph 8.3, the Committee has drawn up a series of circumstances that must be assessed when analysing the proportionality of an eviction. It has also considered factors relevant to a consideration of proportionality: (i) the availability of adequate alternative housing; (ii) the personal circumstances of the occupants and their dependants, including whether there are any vulnerability factors, such as age and disabilities, among others, that would justify that they would suffer disproportionately from the eviction[37]; (iii) the cooperation of the occupants with the authorities in seeking suitable solutions; and (iv) the difference between properties belonging to individuals who need them as a home or to provide vital income and properties belonging to banks, financial institutions or other entities.[38]

10.3 The Committee observes that, according to the information on file, it does not appear that judicial authorities took into account any of the factors mentioned in paragraph 10.2 in its decision related to the eviction of the authors. The Committee notes that in spite of the authors' various requests for social housing and despite social services having been made aware of their need for such housing since 2011, the authors were never offered any other adequate alternative housing options that would allow for the families to remain together. The Committee further observes that the authors requested meetings with the competent authorities and offered to the railway company to regularize their situation as tenants. These signs of collaboration were not taken into account either in the decision to evict the authors. Moreover, the eviction was not a result of a request by an individual who needed the housing

[31] Ibid., paras. 2 and 3.
[32] General comment No. 3 (1990), para. 2.
[33] General comment No. 4 (1991), para. 8.
[34] Ibid., para. 8.
[35] See inter alia *López Albán v Spain*, para. 9.3.
[36] See inter alia *Hernández Cortés et al v Spain* (E/C.12/72/D/26/2018), para. 9.4.
[37] *Vázquez Guerreiro v. Spain* (E/C.12/74/D/70/2018), para. 8.9.
[38] *Vázquez Guerreiro v. Spain* (E/C.12/74/D/70/2018), para. 10.2. See also *El Mourabit Ouazizi and Boudfan v. Spain* (E/C.12/72/D/133/2019).

as a home or vital income, but was the effect of a proceeding started by the Italian Railway company, which had disregarded the premises for several years.

10.4 The Committees notes that the measures that are taken within the framework of an eviction must be reasonable and appropriate in view of the interests at stake and the circumstances of the persons affected.[39]

10.5 The Committee considers it relevant to state that, in the light of the specific circumstances of the present case, a proper proportionality test should have considered: the weighing of the socio-economic vulnerability of the authors and their families; the differential impact of the eviction on the authors, as heads of households in a precarious economic situations; the best interests of the children and their right to be heard; the author's previous applications for social housing; the availability of social housing on the part of the responsible administrative authorities and the existence of alternative means of resolving the problem, and the lengthy period of time that they had resided in the houses. In order to assess the authors' situation, the intervening authorities should have held a genuine and effective consultation with them, and should have requested the relevant administrative authorities to provide information on the availability of social housing to be offered to the authors and their families.

10.6 The Committee is therefore of the view that the failure to carry out a sufficiently comprehensive analysis of the proportionality of the eviction constituted a violation by the State party of the right to housing of the authors under article 11 of the Covenant.

D. Conclusion and recommendations

11.1 On the basis of all the information provided and in the particular circumstances of this case, the Committee considers that the eviction of the authors and their families without an adequate proportionality test by the judicial authorities, in the absence of consideration of the disproportionate impact that the eviction might have on the authors and their families and of the best interests of the child, and without respecting the procedural guarantees of adequate and genuine consultation, constituted a violation of the authors' right to adequate housing.

11.2 The Committee, acting under article 9, paragraph 1, of the Optional Protocol, is of the view that the State party violated the authors' right under article 11, paragraph 1 of the Covenant. In the light of the Committee's Views in the present communication, the Committee makes the following recommendations to the State party.

Recommendations in respect of the authors

12. The State party is under an obligation to provide the authors with an effective remedy, in particular by: (a) reassessing, if they are not currently in adequate housing, their state of necessity and their place on the waiting list, taking into account the length of time that their application for housing has been on file with the relevant authorities, starting from the date on which they applied, with a view to providing them with public housing or taking some other measure that would enable them to live in adequate housing, bearing in mind the criteria set out in the present Views; (b) providing the authors with financial compensation for the violations of their rights; and (c) reimbursing the authors for the legal costs reasonably incurred in submitting this communication, at both the domestic and international levels.

General recommendations

13. The Committee considers that the remedies recommended in the context of individual communications may include guarantees of non-repetition and recalls that the State party has an obligation to prevent similar violations in the future. The State party should ensure that its legislation and the enforcement thereof are consistent with the obligations established under the Covenant. In particular, the State party has an obligation to:

(a) Ensure that its normative framework allows persons in respect of whom an eviction order is issued and who might consequently be at risk of destitution or of violation

[39] *Ben Djazia and Bellili v. Spain* (E/C.12/61/D/5/2015), paras. 15.3 and 15.5.

of their Covenant rights, including persons who have scarce economic resources or are occupying a dwelling without legal title, to challenge the decision before a judicial or other impartial and independent authority with the power to order the cessation of the violation and to provide an effective remedy so that such authorities can examine the proportionality of the measure in the light of the criteria for limiting the rights enshrined in the Covenant under the terms of article 4;

(b) Take the necessary measures to ensure that evictions affecting persons who do not have the wherewithal to obtain alternative housing take place only within the framework of proceedings involving genuine and effective consultation with the persons concerned in which all available alternative housing (whether belonging to such persons or made available by the relevant State agencies) is assessed and only after the State has taken all essential steps, to the maximum of its available resources, to ensure that evicted persons have alternative housing, especially in cases involving families, older persons, children and/or other persons in vulnerable situations. If the group to be evicted includes children, the proceedings must guarantee their right to be heard;

(c) Take the necessary measures to solve the problems caused by the failure of the courts and the social services to coordinate their efforts, which can result in an evicted person's being left without adequate accommodation;

(d) Develop and implement, to the maximum of its available resources, a comprehensive plan to guarantee the right to adequate housing for low-income persons, in keeping with general comment No. 4 (1991). This plan should provide for the necessary resources, indicators, time frames and evaluation criteria to guarantee these individuals' right to housing in a reasonable, timely and measurable manner.

14. In accordance with article 9 (2) of the Optional Protocol and rule 21 (1) of the rules of procedure under the Optional Protocol, the State party is requested to submit to the Committee, within a period of six months, a written response, including information on measures taken in follow-up to the Views and recommendations of the Committee. The State party is also requested to publish the Views of the Committee and to distribute them widely, in an accessible format, so that they reach all sectors of the population.