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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the 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, Balakrishnan Rajagopal, in accordance with Human Rights Council resolution [43/14](#).

* [A/77/150](#).



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, Balakrishnan Rajagopal

The right to adequate housing during violent conflict

Summary

In the present report, 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, underlines that massive violations of the right to adequate housing continue in unprecedented fashion during and after violent conflict. The attacking, bombing and shelling of civilian targets and the destruction of entire cities and villages – displacing millions into homelessness – have continued unabated despite the development of modern human rights and humanitarian law.

While international human rights, humanitarian and criminal law outlaw all forms of arbitrary destruction of housing, arbitrary displacement, forced evictions and other serious and large-scale violations of the right to adequate housing, there is an alarming continuity of gross violations of the right to adequate housing in times of conflict. Those severe human rights violations have been largely met with impunity, have entrenched housing discrimination and segregation and have often resulted in a lack of reparation, limited options for voluntary return and a lack of just and durable solutions.

United Nations organs and bodies, including the Secretariat, the General Assembly, the Security Council and the Human Rights Council; United Nations human rights mechanisms; fact-finding missions of the Office of the United Nations High Commissioner for Human Rights; and international tribunals have increased their attention to severe violations of housing rights in conflict and post-conflict settings. However, more action is urgently required by the international community to prevent, end and overcome such egregious violations and to ensure justice and respect for human rights in post-conflict and reconstruction settings.

The present report analyses the legal, political and practical challenges to preventing, ending and responding to systematic and deliberate mass destruction of homes during violent conflict. It calls for recognizing such severe violations of international law as “domicide” – a distinct crime under international criminal law – and concludes with a set of recommendations to prevent and eliminate that pervasive curse on humankind.

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I. Introduction

1. As of 2022, more than 100 million people worldwide have been forcibly displaced as a result of persecution, conflict, violence, human rights violations or events seriously disturbing public order. Propelled by new waves of violence or protracted conflict around the globe, today's record of displaced persons far surpasses that of the post-World War II period.

2. Although the numbers may be staggering, the harmful impact of violent conflict on civilian life is nothing new. Indeed, history has shown that homes have often been a primary target in war. In the early military operations of the Mesopotamian city-states, which date back to the third millennium B.C.E., warfare “involved the complete destruction of small cities, the demolition of their temples, [and] the carrying off of their inhabitants into captivity”.¹

3. During World War II, German Armed Forces demolished homes and other civilian infrastructure as a military tactic. In the 1946 Judgment of the International Military Tribunal (Nuremberg), the Chief of the Operations Staff of the High Command of the German Armed Forces, Alfred Jodl, was found guilty of war crimes and crimes against humanity for, inter alia, having ordered the evacuation of all persons in northern Norway and the burning of their houses.² Similarly, a British Military Tribunal found Field Marshal Erich von Manstein guilty of war crimes for, among other acts, having issued scorched-earth orders to “deport civilian inhabitants of the territories occupied by the German Armed Forces under his command” in Eastern Europe and “to destroy their houses as well as all other objects of economic value.”³

4. Aside from those notable examples, impunity for massive destruction of housing has been the norm. Only limited attention has been given to the deliberate destruction of homes, villages and towns in other German-occupied territories that currently belong to Poland, the Russian Federation or Ukraine, nor to the destruction of 3.3 million houses in Germany, including by the systemic bombarding of cities by Allied Forces.⁴ On 6 August 1945, over 60,000 buildings were destroyed or severely damaged in Hiroshima by the atomic bomb dropped by the Armed Forces of the United States of America. Another 19,587 buildings and houses were destroyed in Nagasaki by the second atomic bomb dropped just two days later.⁵ Systematic housing destruction and scorched-earth practices have also been seen in decolonization movements around the globe, from the revolution in the Philippines against the United States of America to the Malayan and Indonesian liberation movements from the United Kingdom of Great Britain and Northern Ireland.

5. The deliberate destruction of homes during violent conflicts continues to the current day. With the urbanization of war, the conflict-related destruction of homes has intensified. Today, more people live in densely populated areas, where violent or armed conflict is increasingly taking place. Weapons with wide area impacts continue to be used unabated in urban and residential areas. They kill and maim civilians in indiscriminate fashion, destroy and damage hundreds of thousands of homes and evict and displace millions in fundamental disrespect for international humanitarian and international human rights law. That state of affairs has, by some scholars, been termed “domicide”: the massive and deliberate destruction of homes in order to cause

¹ Bree Akesson and Andrew R. Basso, *From Bureaucracy to Bullets: Extreme Domicide and the Right to Home* (New Brunswick, New Jersey, Rutgers University Press, 2022), p. 26.

² International Military Tribunal (Nuremberg), Judgment, 30 September and 1 October 1946.

³ See the charge sheet of May 1949, served on 14 July 1949, p. 37.

⁴ J. Douglas Porteous and Sandra E. Smith, *Domicide: The Global Destruction of Home* (McGill-Queen's University Press, 2001), p. 68.

⁵ Avalon Project, *The Atomic Bombings of Hiroshima and Nagasaki*: Chapter 9.

human suffering.⁶ The Special Rapporteur takes a more expansive view of that concept. Etymologically rooted in the Latin terms *domus* (home) and *caedo* (to kill), domicide refers not only to the deliberate destruction of the physical structures of homes, but also to the systematic violation of housing rights in violation of international law.

6. As of 2017, approximately one third of all homes in the Syrian Arab Republic had been either partially or totally destroyed, an estimate that has only increased in the light of the bombardments of eastern Ghutah in 2017 and 2018 and of Idlib and Aleppo in 2020 (A/HRC/44/61, para. 7). Today, more than 13 million people have either fled the country or are displaced within its borders.⁷ In Libya, over 120,000 civilians were displaced between April and July 2019 by the continuous use of heavy explosive weapons in residential areas of Tripoli.⁸ In Myanmar, over 200 Rohingya settlements were almost completely burned down or bulldozed between August 2017 and April 2019, when the armed forces of Myanmar systematically attacked Rohingya villages, destroying approximately 40,600 structures, killing more than 10,000 civilians and displacing over 743,000 Rohingya into neighbouring Bangladesh in a “clearance operation” better characterized as genocide, crimes against humanity and war crimes.⁹ Displacement and deliberate destruction of housing by both State and non-State armed groups continues in Myanmar. In March 2022, the Special Rapporteur on the situation of human rights in Myanmar reported that half of the 300,000 people living in Kayah State, including 80 percent of the population of Loikaw, the capital of the State, had been displaced because of persistent airstrikes and attacks by the military.¹⁰ Similar levels of housing destruction and forced displacement, by non-State armed groups as well as domestic and foreign State armed forces, have been reported in the armed conflicts in Afghanistan¹¹ and Iraq.¹²

7. Within the first 10 days of the aggression of the Russian Federation against Ukraine, tens of thousands of homes across the country had been deliberately targeted and left either severely damaged or completely destroyed. In Mariupol alone, a city of 400,000 inhabitants, 90 per cent of all apartment buildings have reportedly been damaged or destroyed.¹³

8. Those situations are only a few examples illustrating the impact of conflict on civilian lives and the right to adequate housing. The systematic destruction of homes comes not only in manifold contexts, but also in manifold form – in warfare as well as lawfare. The right to adequate housing can be violated also through bureaucracies, the undermining of the right to return, the condoning of the usurpation of homes, the

⁶ Porteous and Smith, *Domicide* and Akesson and Basso, *From Bureaucracy to Bullets*.

⁷ Office of the United Nations High Commissioner for Refugees (UNHCR), “Eleven years on, mounting challenges push many displaced Syrians to the brink”, briefing note, 15 March 2022.

⁸ International Committee of the Red Cross, *Explosive Weapons With Wide Area Effects: A Deadly Choice in Populated Areas* (Geneva, 2022), p. 51.

⁹ See A/HRC/42/CRP.5, paras. 5, 59 and 116 and A/HRC/39/64, para. 36.

¹⁰ A/HRC/49/76, para. 21.

¹¹ On housing destruction and the broader challenges to the right to housing in Afghanistan, see E/CN.4/2004/48/Add.2 and T. Shah and R. Nordland, “Afghan Panel and U.S. Dispute War’s Toll on Property”, *New York Times*, 13 January 2011. On forced displacement in Afghanistan, see Internal Displacement Monitoring Centre, *Global Report on Internal Displacement 2019* (May 2019) and United Nations News, “Displacement, humanitarian needs surging inside Afghanistan and across region”, 8 February 2022.

¹² See Tareq Hamid and Rohaida Nordin, “Fallujah Battles: Violations of the International Humanitarian Law”, *UUM Journal of Legal Studies*, vol. 2 (2011), pp. 39–64.

¹³ Submission of the Association of Reintegration of Crimea, 5 May 2022, p. 2. Available at https://www.ohchr.org/sites/default/files/2022-05/AssociationReintegrationCrimea_CFI-protecting-after-conflict.pdf.

confiscation or expropriation of housing or by forcing a population living under occupation to demolish their own homes.

9. In the Syrian Arab Republic, in addition to the direct destruction of civilian homes, Law No. 66 of 2012 and Law No. 10 of 2018 were issued, which afforded the Syrian Government broad discretion to confiscate and redevelop returning residents' properties without due process of law.¹⁴ Similarly, Israel has used legal mechanisms – the Absentee Property Law and land registration procedures – to confiscate Palestinian lands and properties. The increasingly institutionalized regime of systematic racial oppression and discrimination against the people of Palestine has been considered by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 to satisfy the prevailing evidentiary standard for the crime against humanity of apartheid.¹⁵

10. Far from mere collateral damage, the destruction of homes in violent and armed conflicts is not only systemic, but systematic. Concomitantly, the destruction of homes must be systematically prohibited and punished. The present report addresses the lack of adequate prevention of conflict-related housing rights violations and the lack of effective mechanisms and policies that would ensure justice in relation to domicile. The report complements previous thematic reports of the Special Rapporteur concerning the right to adequate housing in disaster and post-conflict settings (A/66/270 and A/HRC/16/42), and of the Special Rapporteur on the human rights of internally displaced persons concerning housing, land and property rights (A/HRC/47/37). States, United Nations agencies, civil society organizations, legal experts and any other stakeholders were offered the opportunity to make submissions with relevant information for consideration by the Special Rapporteur, which have been made available on the website of the Office of the United Nations High Commissioner for Human Rights.¹⁶

II. The protection of the right to adequate housing during and after conflict

A. International human rights law

11. The right to adequate housing is enshrined in several international and regional human rights instruments.¹⁷ During violent conflict, any elements of the right to adequate housing might be violated, including: (a) security of tenure, (b) availability of services, (c) affordability, (d) habitability, (e) accessibility, (f) location and (g) cultural adequacy.¹⁸ Often, several of those elements are violated simultaneously. Attacking, destroying and demolishing housing or rendering it uninhabitable are thus fundamental attacks on the right to housing, which strip it of its core function to protect the right to live somewhere in security, peace and dignity.¹⁹ Such actions also violate the International Covenant on Civil and Political Rights, which, in article 17, stipulates that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence” and which requires States to protect everyone against such interference and attacks.

¹⁴ Submission of the Syrian Initiative to Combat Sexual and Gender-based Violence, 2022, p. 3.

¹⁵ A/HRC/49/87, para. 55.

¹⁶ <https://www.ohchr.org/en/calls-for-input/2022/call-input-protecting-right-adequate-housing-during-and-after-violent-conflict>.

¹⁷ <https://www.ohchr.org/en/special-procedures/sr-housing/international-standards>.

¹⁸ Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), para. 8.

¹⁹ Ibid., para. 7.

12. Forced eviction and arbitrary displacement violate the right to security of tenure as a core element of the right to adequate housing. Armed conflicts also affect the availability of public services such as water and energy supply, public transportation, education and health services. Conflict-related damage and destruction of housing do not only make existing housing stock uninhabitable, they also produce and reinforce housing shortages, thereby contributing to increased housing costs for displaced persons and for host communities that have to cope with a significant influx of displaced persons.

13. Even when the housing itself is not damaged or destroyed, it is often no longer accessible to its tenants owing to evacuation orders, violence or armed conflict, mined access roads or unexploded ordnance, or because it is now located in a hostile environment. Housing can also be subjected to usurpation by new occupants. Violence and armed conflict often restrict the location where one can live in peace, security and dignity. It forces millions to live in camps or in areas in which they have limited or reduced access to livelihoods, work, education and health care, disrupting existing social networks, family relations and community life.

14. Finally, violent conflicts force many displaced persons to live in housing that may lack cultural adequacy, undermining the fundamental sense of belonging and home. Many displaced persons find themselves suddenly in a new house that does not feel like home, either inside or outside. Often, they lack adequate privacy in camp settings or collective or emergency shelters or are required to share spaces with other families.

1. Prohibition of forced evictions and arbitrary displacement

15. The Commission on Human Rights, in its resolution 1993/77 of 10 March 1993, affirmed that the “practice of forced eviction constitutes a gross violation of human rights, in particular of the right to adequate housing” and urged “Governments to undertake immediate measures, at all levels, aimed at eliminating the practice of forced eviction”. The State obligation to prevent housing rights violations applies also to situations of internal strife and violent conflict, including internal and international armed conflict and occupation. States must therefore “ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies.”²⁰

16. In the Guiding Principles on Internal Displacement ([E/CN.4/1998/53/Add.2](#)), the Commission on Human Rights reiterated that “every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence” (Principle 6) and that “all authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons” (Principle 5). Similarly, principle 5 of the principles on housing and property restitution for refugees and displaced persons ([E/CN.4/Sub.2/2005/17](#)) prohibits the “forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war.”

17. Most notably, article 3 (1) of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) provides that State parties shall undertake to refrain from, prohibit and prevent arbitrary displacement (subpara. (a)); ensure individual responsibility for acts of arbitrary displacement in accordance with applicable domestic and international criminal law (subpara. (g)); and ensure the accountability of non-State actors

²⁰ Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997), para. 9.

concerned, including multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts (subpara. (h)). Article 4 (6) provides that States parties shall declare as offences punishable by law acts of arbitrary displacement that amount to genocide, war crimes, or crimes against humanity. Article 7 (5) (a) provides that members of armed groups shall be prohibited from carrying out arbitrary displacement during situations of armed conflict.

18. While there is no specific regional treaty on arbitrary displacement in Europe, the Parliamentary Assembly of the Council of Europe, in its resolution [2367 \(2021\)](#), stressed that arbitrary displacement and related war crimes and crimes against humanity would typically violate several rights of the European Convention on Human Rights. The resolution also called upon all members of the Council of Europe to implement the Guiding Principles on Internal Displacement in their national law. Similarly, the Inter-American Court of Human Rights has underlined that arbitrary displacement is a continuous violation of multiple rights, including the right to an adequate standard of living, the right to move freely within the territory of the State, the right to choose one's place of residence, the right to humane treatment, the right to private and family life, the right to property, the right to work, the right to health, the right to identity and the right to participate in government.²¹

19. In order to determine whether displacement is permissible, it is not sufficient for it to be simply provided for in law in its technical sense; it also has to be assessed in the light of three main criteria: (a) the grounds for displacement, (b) the due process and safeguards that must be respected during displacement, and (c) the duration of displacement (see [A/76/169](#)). In the context of armed conflict, the Guiding Principles on Internal Displacement provide that forced displacement is arbitrary unless it is carried out for the security of the civilians involved or for imperative military reasons (Principle 6 (2) (b)).

2. Lawful limitations of the right to adequate housing

20. While the right to adequate housing is non-derogable, it may be limited. However, as specified in article 4 of the International Covenant on Economic, Social and Cultural Rights, “the State may subject [that right] only to such limitations as are determined by law only in so far as this may be compatible with the nature of [this right] and solely for the purpose of promoting the general welfare in a democratic society.” Limitations of the right to adequate housing are only lawful if all of the three criteria below are fulfilled.

21. First, any limitation that would deny someone the satisfaction of minimum essential levels of the right to adequate housing would be generally incompatible with the nature of this right, as it would negate the very reason why this human right has been established.²²

22. Second, in the context of violent conflict, it is difficult to see how the destruction, bombing or burning of housing or arbitrary displacement and forced evictions would contribute to the promotion of the general welfare in a democratic society. To the contrary, such conflict-related housing rights violations destroy general welfare and also often endanger democratic governance.

²¹ Inter-American Court of Human Rights, *Yarce et al. v. Colombia*, Judgment (Preliminary Objection, Merits, Reparations and Costs), 22 November 2016, para. 241 and Inter-American Court of Human Rights, *The Ituango Massacres v. Colombia*, Judgment (Preliminary Objection, Merits, Reparations and Costs), 1 July 2006, para. 212.

²² See the Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990), para. 10. Limitations may not deprive these rights of their *raison d'être*.

23. Third, arbitrary attacks on civilian homes usually lack any legal basis, as such attacks contravene either national or international law, or both.

24. Lawful limitations of the right to adequate housing in conflict situations may include temporary evacuation orders to protect civilians from conflict-related harm. However, such orders must be justifiable, necessary, proportionate, reasonable and suitable to protect the affected persons from serious risks in the light of the totality of all their rights.²³

3. Extraterritorial application of human rights law in armed conflicts

25. The Special Rapporteur wishes to stress that human rights obligations, whether enshrined in the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights, are not confined to a State party's territorial limits. Both covenants are understood to have extraterritorial application wherever a State exercises effective control over the foreign territory, the person, or the infliction of the alleged violation.²⁴ The rights enshrined in the International Covenant on Economic, Social and Cultural Rights and the Universal Declaration of Human Rights are expressed without any restriction to any particular territory or jurisdiction and States must "refrain from interfering directly or indirectly with the enjoyment of [these rights] by persons outside their territories."²⁵ Human rights law thus prohibits the illegal use of force by State or private actors in a foreign territory.

26. Any other understanding would strip human rights law of its core purpose: to protect everyone, without distinction, regardless of which State or territory the person belongs to, which is articulated in article 2 of the Universal Declaration of Human Rights. Such a reading of human rights law is imperative, as the Declaration, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights also include a common provision specifying that "nothing in [the present Covenant/this Declaration] may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein".²⁶ Bombing or any other arbitrary destruction of civilian housing are clearly acts that aim at the destruction of the right to adequate housing and other human rights. Therefore, such activities are strictly prohibited by international human rights law. Most importantly, that prohibition applies to any State, group or person, including non-State actors.

B. International humanitarian law

27. The Convention respecting the Laws and Customs of War on Land (Hague Convention (IV)), the Geneva Conventions of 12 August 1949 and the Protocols Additional thereto and the rules of international customary law prohibit parties to an armed conflict, whether it is of an international or non-international nature, to attack or destroy civilian housing and infrastructure required for the survival of the civilian population. International humanitarian law thus reinforces the general protection of the home and the right to adequate housing under human rights law during armed conflict and situations of occupation.

²³ Human Rights Committee, general comment No. 27 (1999).

²⁴ Human Rights Committee, general comment No. 31 (2004), para. 10, and [E/CN.4/Sub.2/2005/14](#), para. 82.

²⁵ Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017), para. 29.

²⁶ Common article 5 (1) of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and article 30 of the Universal Declaration of Human Rights.

28. International humanitarian law is founded on the principle of a distinction between military and non-military objectives.²⁷ During armed conflict, attacks may be directed against military objectives only, never against civilians, their homes or their property, including shelters and emergency housing for civilians.²⁸

29. As defined in Protocol II to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, and as widely accepted as a rule of customary international law, a “military objective” is understood to refer to “any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”²⁹

30. While housing is not expressly mentioned in many provisions of international humanitarian law, it is generally protected in international humanitarian law as a “civilian object” or “civilian property”. As long as housing is inhabited by civilians, attacks on it would amount to an attack on civilians prohibited by international humanitarian law. Forced evictions are outlawed in international humanitarian law either as deportation, displacement or transfer of population.³⁰

31. Certain housing-related violations of international humanitarian law may amount to grave breaches of the Geneva Conventions and the Protocol Additional thereto, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), which must be prosecuted by all States on the basis of the principle of universal jurisdiction. Such grave breaches include extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly (Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), art. 147), making the civilian population or individual civilians the object of attack; launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects ... making non-defended localities and demilitarized zones the object of attack; the deportation or transfer of all or part of a population; and practices of apartheid (Protocol I, art. 85 (3) and (4)).

32. Despite those provisions, the protection of housing under international humanitarian law is not absolute. There are basically two exceptions:

(a) Attacks on housing used exclusively by combatants, such as on military barracks or other living quarters of combatants;

(b) Attacks on housing that was once used by civilians, provided that such housing has been transformed into a military objective and is used to make an active effort to military action.

²⁷ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 48.

²⁸ See, for example, the Geneva Convention relative to the Protection of Civilian Persons in Time of War, arts. 33 and 53 and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), arts. 57 and 65.

²⁹ The Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II) to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, art. 2 (4); the 1996 amendment to Protocol II to the Convention on Certain Conventional Weapons, art. 2 (6); and the Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III) to the Convention on Certain Conventional Weapons, art. 1 (3).

³⁰ A compilation of selected international humanitarian law standards protecting housing is available at: <https://www.ohchr.org/en/calls-for-input/2022/call-input-protecting-right-adequate-housing-during-and-after-violent-conflict>.

33. It must be stressed, however, that article 52 (3) of Protocol I expressly provides, in case of doubt, for a civilian-use presumption.

34. In summary, international humanitarian law prohibits attacking and destroying any civilian home as long as it has not become a legitimate military objective. The reality in many recent armed conflicts, however, is different. Too often international humanitarian law is not observed by parties to a conflict.

35. An example is the continued use of explosive weapons with wide-area effects in densely populated areas, such as cities, towns, villages or other settlements. These include artillery (guns and rockets), cluster munitions and large improvised explosive devices, which have killed and maimed many civilians and are causing significant damage to civilian housing, property and critical infrastructure, disruption of services essential to the survival of the civilian population (including water, electricity, sanitation and health care), displacement of civilians and contamination of residential areas by unexploded ordnance.³¹

36. By their very nature, those weapons cannot be sufficiently precisely targeted against military objectives. Employing such weapons in densely populated areas will therefore in nearly all instances either result in indiscriminate attacks on civilians and their property, amount to prohibited area bombardment, or amount to disproportionate attacks causing incidental loss of civilian life, injury to civilians or damage to civilian objects, which are all outlawed by international humanitarian law.³²

37. The Special Rapporteur therefore welcomes the initiative that has resulted in a political declaration on strengthening the protection of civilians from the humanitarian consequences arising from the use of explosive weapons in populated areas.³³ While the declaration is an important step in the right direction, the Special Rapporteur is of the view that States and armed forces should not only strive to avoid the use of explosive weapons in populated areas; the use of certain explosive weapons in populated areas must be banned entirely. It is difficult to understand how the use of such weapons in populated areas is compatible with existing rules of international humanitarian law, in particular when interpreted in consonance with the right to adequate housing, which does not allow for any derogation during national emergencies.

C. International criminal law

38. There are four international crimes within the jurisdiction of the International Criminal Court: (a) genocide, (b) crimes against humanity, (c) war crimes and (d) the crime of aggression. While the destruction of civilian homes during armed conflict may be prosecuted as a war crime, in certain instances destruction of housing may also amount ipso facto to the crime of genocide or crimes against humanity.

39. Concerning war crimes, it should be noted that article 8 of the Rome Statute of the International Criminal Court is not limited to the grave breaches enumerated in the Geneva Conventions and includes other serious violations of the laws and customs applicable in international and non-international armed conflicts as well.

40. Unlike war crimes, neither genocide nor crimes against humanity require an armed conflict nexus. Therefore, violation of housing rights can also be punishable

³¹ See International Committee of the Red Cross, *Explosive weapons with wide area effects: A deadly choice in populated areas* (Geneva, 2022).

³² Concerning the use of such weapons in populated areas from a human rights points of view, see the European Court of Human Rights, *Isayeva v. Russia*, 57950/00, 24 February 2005, para. 191.

³³ International Committee of the Red Cross, “Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences arising from the use of Explosive Weapons in Populated Areas”, statement delivered on 17 June 2022.

under international criminal law in peacetime or during violent conflicts that may not have reached the threshold of armed conflict.

41. Article 6 of the Rome Statute adopts the conventional definition of genocide, which refers to the following acts, when committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such: the killing of members of the victim group; causing serious bodily or mental harm thereto; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; or forcibly transferring children of the group to another group. Domicide, whether or not resulting in the physical destruction of a home, may therefore be a means to genocide when such destruction is undertaken to bring about the physical destruction of the victim group. Unfortunately, the world has witnessed all too many times how domicile and genocide are tightly entwined, such as in the atrocities in Bosnia and Herzegovina, Rwanda, and in the Holocaust.

42. The deliberate destruction of homes may also constitute a crime against humanity, which covers the crimes of deportation, forcible transfer of a population, persecution, apartheid and inhumane acts of a similar nature and gravity. Such crimes amount to crimes against humanity when they are committed as part of a widespread or systematic attack directed against a civilian population.

43. Widespread or systematic housing destruction often triggers the forced deportation or forcible transfer of population. As held in *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, “in order to establish that the crime of deportation or forcible transfer of population is consummated, the Prosecutor has to prove that one or more acts that the perpetrator has performed produced the effect to deport or forcibly transfer the victim.”³⁴

44. The crime of persecution is defined in the Rome Statute as the severe deprivation, contrary to international law, of one or more persons’ fundamental rights “by reason of the identity of the group or collectivity”. Therefore, persecution, as a crime against humanity, may be committed through the systematic deprivation of the fundamental right to housing directed against a given group *qua* group identity.

45. The crime of apartheid and persecution may likewise be potentially exhibited in the violation of housing rights in the *Situation in the State of Palestine* before the International Criminal Court. In line with the findings of the *Report* of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (A/HRC/49/87) and the analysis of Israeli/Palestinian and international human rights non-governmental organizations, the institutionalized regime of systematic racial oppression and discrimination that has led to the destruction of Palestinian homes is nothing short of apartheid as defined under article 7 (2) (h) of the Rome Statute. In addition, the intentional and severe deprivation of the fundamental right to housing, contrary to international law, owing to forcible transfer of population, would likewise satisfy the definition of persecution under Article 7 (2) (g).³⁵

³⁴ International Criminal Court, *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, ICC-01/09-01/11, Decision on Confirmation of Charges, 23 January 2012, para. 245.

³⁵ See State of Palestine, “Referral by the State of Palestine Pursuant to Articles 13 (a) and 14 of the Rome Statute” (May 2018) (available at https://www.icc-cpi.int/sites/default/files/itemsDocuments/2018-05-22_ref-palestine.pdf); Amnesty International, *Israel’s Apartheid against Palestinians* (February 2022); Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* (April 2021); B’Tselem, “A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: This is apartheid”, 12 January 2021; and Yesh Din, *The Israeli Occupation of the West Bank and the Crime of Apartheid: Legal Opinion* (June 2020).

46. Finally, domicide may qualify as an inhumane act of a similar nature and gravity to those aforementioned acts. Indeed, the destruction of home is not only related, but is comparable, to the crime of deportation or forcible transfer of population. Thus, domicide may fall within this residual category³⁶ of other inhuman acts in two scenarios: the first, should the destruction of home per se, rather than the deportation it led to, be the conduct of focus, or second, should homes be destroyed without resulting in the deportation or forcible transfer of the victims.

47. While domicide can already be prosecuted as a crime against humanity using the existing legal framework of international criminal law, consideration should be given to establishing domicide as an international crime of its own standing. In the view of the Special Rapporteur, such proposals should be seriously considered given the gravity and severity of human rights violations associated with domicide and the magnitude of the related human suffering. It would close protection gaps and help to ensure that severe, widespread and systematic violations of economic, social and cultural rights that also cause severe harm to various other rights, such the rights to life, physical integrity and mental or physical health, receive the same attention in international criminal law as any other gross violations of human rights.

48. One avenue for establishing domicide as an international crime would be to include it in the list of acts that may constitute crimes against humanity, where the act of domicide could be defined as “the deliberate destruction of homes, the rendering of homes uninhabitable or any other systematic denial of housing when such acts are carried out in violation of international law and committed as part of a widespread or systematic attack against any civilian population”. While defining domicide in international law would require further discussion, such a preliminary definition may serve as a starting point for that debate.

III. The impact of conflict-related violations of housing rights

A. Impact on other human rights and conflict-affected societies

49. The humanitarian costs of armed conflict are high. With homes destroyed, displaced persons are forced to live in accommodations with inadequate living conditions. The siege of the city of Marawi in 2017, between the Armed Forces of the Philippines and terrorist forces, resulted in an estimated 369,196 internally displaced persons, many of whom were placed in underfunded temporary settlement sites. Each shelter unit has a floor area of a mere 22 square metres, forcing larger families in the shelters to sleep in rotation.³⁷ Similarly, in 2018, displacement sites in the Diffa region of Niger were found to be struggling to meet basic needs, including health care and food and nutrition (A/HRC/38/39/Add.3, para. 39). Forced displacement also has implications for the right to education, as it often results, for example, in children’s schooling being interrupted or completely stopped.

50. However, domicide can also be committed without destroying the physical structure of any home, by cutting off access to livelihoods, water, sanitation, heating, energy or food, forcing residents into displacement. Most often, domicide is marked by a combined destruction of housing and life-sustaining infrastructure. For example, in May and June 2022, the city of Mariupol faced devastating levels of destruction, with an estimated 90 per cent of all residential buildings damaged or destroyed and

³⁶ International Criminal Court, *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, ICC-01/09-02/11, Decision on the Confirmation of Charges, 23 January 2012, para. 269.

³⁷ Bangsamoro Transition Authority, Special Committee on Marawi, *Report No. 35*, 26 August 2020, p. 35.

the displacement of an estimated 350,000 people. Now that the shelling of Mariupol has subsided, what is left is a shattered and depleted city, with its remaining residents struggling daily with limited access to basic utilities and social services. Many people either no longer have a place to live or live in damaged apartments, often with no windows, electricity, gas or running water.³⁸

51. Human rights are interdependent, indivisible and interrelated, and this is particularly emphasized in situations of conflict where homes and residential areas are targeted. When civilians or other persons hors de combat are killed, maimed or mentally harmed in attacks on housing, their rights to life, to the security of the person (International Covenant on Civil and Political Rights, arts. 6 and 9)³⁹ and to the highest attainable standard of physical and mental health (International Covenant on Economic, Social and Cultural Rights, art. 12 (1)) are violated at the same time.⁴⁰ Similarly, the deliberate burning and destruction of housing may, in certain circumstances, constitute acts of cruel, inhuman or degrading treatment or punishment (International Covenant on Civil and Political Rights, art. 7).⁴¹ Attacks on housing furthermore undermine the freedom of choice of residence and violate the protection of privacy, family and the home (International Covenant on Civil and Political Rights, arts. 12 (1) and 17)).

52. The right to adequate housing is a precondition for the enjoyment of a range of human rights. Domicide, therefore, is much more than simply an intrusion into one's property rights. It is a trigger event that sets off a domino effect on the enjoyment of other human rights as well, including the rights to life; security of the person; health; education; food; water; sanitation; work; social security; a clean, healthy and sustainable environment; protection against cruel, inhumane and degrading treatment; and the protection of the child, family and home. Domicide is not only a gross violation of the right to adequate housing, it is also a deliberate attack on a wide array of human rights that underlines the need to for it to be accorded recognition as an international crime of its own standing.

B. Impact on particular groups

53. The nature of violent conflicts and war has changed dramatically: armed conflicts no longer take place only between countries, but also within them, and, increasingly, in populated areas, such as villages, towns and cities, affecting an increasing number of civilians. While it may appear at first glance that all civilian actors are equally vulnerable in the theatre of conflict, the reality is that some groups are affected not only differently, but often more detrimentally than others.

54. Children account for 41 per cent of all forcibly displaced people. As of the end of 2021, an estimated 36.5 million children had been displaced from their homes by conflict, violence, and other crises⁴² – the highest number recorded since World War II. That number has further increased with the aggression against Ukraine, which has

³⁸ Statement by the United Nations High Commissioner for Human Rights to the Human Rights Council, 16 June 2022. Available at <https://www.ohchr.org/en/statements/2022/06/high-commissioner-updates-human-rights-council-mariupol-ukraine>.

³⁹ See also Human Rights Committee, general comment No. 36 (2018), paras. 64–70.

⁴⁰ See also Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000), para. 33.

⁴¹ United Nations Committee against Torture, *Dzemajl et al. v. Yugoslavia*, CAT/C/29/D/161/200, 2 December 2002, para. 9.2.

⁴² UNHCR, Refugee Data Finder, accessed 16 June 2022.

forced nearly two thirds of all Ukrainian children to leave their homes, schools, and often their families behind.⁴³

55. During such precarious times, children are disproportionately impacted by domicile. The loss of a home imposes considerable financial constraints on families, increasing the risk for children of homelessness, human trafficking, early and forced marriages, child labour and involvement in armed conflict. Whether affected directly or indirectly, studies have shown that children suffer from post-traumatic stress disorder, depression, anxiety and behavioural and psychosomatic complaints, which persist long after the cessation of hostilities. Displaced children with disabilities, particularly intellectual or psychosocial disabilities, are reportedly at risk of greater levels of abuse, violence and neglect and may face extreme isolation and marginalization in displacement situations, unable to access the basic health care, food, shelter and support they need to survive (A/HRC/44/41, para. 59).

56. Older persons are also disproportionately vulnerable in times of conflict. They are often unable to leave conflict zones owing to mobility or sensory impairments or as a result of fatigue owing to repeated displacement (A/74/170, para. 35), which in turn has profound psychosocial and economic effects.⁴⁴ In addition, they may also perceive the destruction of their homes differently, having developed particularly strong emotional attachments. Jawad Mahdi, who, at 68 years of age in 2021, lost his home in Gaza City to Israeli airstrikes, compared the loss of his home and “all [those] years of hard work” to “someone ripping your heart out and throwing it”.⁴⁵

57. Similarly, persons with disabilities encounter heightened vulnerability when their housing is attacked, unsafe or rendered uninhabitable (A/72/128, paras. 12–32). Persons with limited mobility are often unable to flee conflict zones, leaving them exposed to violence. Lack of emergency warning systems adapted for persons with sensory disabilities can also prevent their safe evacuation (CRPD/C/UKR/CO/1, para. 22). Temporary shelters often lack accessibility facilities such as ramps, wide doorways or clear signage. The material relied on in displacement sites may be “standardized” and may not be adapted for persons with disabilities (A/HRC/44/41, para. 71).

58. Lesbian, gay, bisexual, transgender and gender diverse persons face specific vulnerabilities during conflict. For example, those who are internally displaced in countries that criminalize consensual same-sex relations and/or diverse gender identities are rarely systematically acknowledged and addressed by institutions that support internally displaced persons, most typically in fragile or conflict-affected areas.⁴⁶

59. Women and girls are particularly harmed by domicile in societies where they are ascribed social roles as primary figures in child-raising and as heads of households. Women may find it more difficult to escape conflict areas when accompanied by infants and small children. Housing destruction can be particularly traumatic to women who have to face the destruction of their home without the support of other relatives. Even within displacement sites, women may lack any control over matters that are traditionally within their domain, such as the provision

⁴³ United Nations Children’s Fund (UNICEF), “UNICEF briefing note on the situation of children in Ukraine”, 14 June 2022.

⁴⁴ Amnesty International, *“Fleeing My Whole Life”: Older People’s Experience of Conflict and Displacement in Myanmar*, (London, 2019), pp. 7–8.

⁴⁵ Human Rights Watch, “No One is Spared: Abuses Against Older People in Armed Conflict”, (February 2022), p. 3.

⁴⁶ “Forcibly displaced LGBT persons face major challenges in search of safe haven”, statement by United Nations and regional human rights experts, 16 May 2022.

of food and health care and the restoration or maintenance of the family unit.⁴⁷ Finally, inheritance laws and practices may likewise be a source of discrimination against women.

60. Women and girls make up approximately half⁴⁸ of the more than 100 million people displaced by conflict, violence, human rights violations and events seriously disturbing public order.⁴⁹ Displaced women and girls, who are already victims of discrimination during peacetime, are vulnerable to a heightened risk of rape, sexual humiliation, prostitution and other forms of gender-based violence during times of conflict. In 2021, it was reported that one out of every five displaced women have faced sexual violence.⁵⁰

61. Notably, marginalized groups may also be the subject of intersecting forms of discrimination and prejudice, which only further heighten the risks they face in already risky situations. Women and girls with disabilities, for example, reportedly face greater risks of sexual and gender-based violence because of stigma linked to disability, social isolation and the loss of protective community networks. Domicide is also more readily committed against individuals and communities with discriminatory intent or effect on the basis of race, religion, ethnicity, language, indigeneity or other grounds prohibited by international human rights law.

IV. Preventing housing rights violations in violent conflict

62. States do not only have the obligation to punish domicile after the fact; they must also make all necessary efforts to prevent it at the outset. Principle 5 of the principles on housing and property restitution for refugees and displaced persons and Principle 6 of the Guiding Principles on Internal Displacement recognize the right to be protected against arbitrary displacement from one's home, land or place of habitual residence. States should thus incorporate legislative, judicial and other forms of protection against any arbitrary demolition of housing, irrespective of whether it is committed by State or non-State actors.

63. In order to prevent forced evictions, arbitrary housing demolitions and displacement, States should ensure that their national laws regulating security of tenure, evictions, housing demolitions, expropriation of housing, housing restitution and compensation are fully compliant with the basic principles and guidelines on development-based evictions and displacement, the Guiding Principles on Internal Displacement, the principles on housing and property restitution for refugees and displaced persons and relevant regional treaties, such as the Kampala Convention.

64. As protection against forced evictions and arbitrary displacement is already weak in peacetime, it is unlikely to be strong when violence or armed conflict breaks out. National criminal law should therefore make any arbitrary evictions and displacement in violation of international human rights law, international humanitarian law and international criminal law punishable and subject to penalties proportionate to the gravity of the offence or crime. A recent study provides various examples of how States have made arbitrary displacement a criminal offence in their jurisdictions.⁵¹

⁴⁷ Charlotte Lindsey, *Women Facing War: ICRC Study on the Impact of Armed Conflict on Women*, (Geneva, International Committee of the Red Cross, 2001), p. 65.

⁴⁸ UNHCR, "Figures at a Glance", accessed 16 June 2022.

⁴⁹ UNHCR, "Refugee Data Finder", accessed 16 June 2022.

⁵⁰ UNCHR, "UNHCR urges support to address worsening gender-based violence impact on displaced women and girls", press release, 25 November 2021.

⁵¹ See UNHCR, *Making Arbitrary Displacement a Crime: Law and Practice* (March 2022).

65. States should ensure not only that their national laws are compliant with international law standards, but also that public officials, law enforcement, armed personnel, lawyers and judges are trained in international human rights, humanitarian and criminal law pertaining to severe housing rights violations and that they are able to apply it. In particular, armed forces and security forces must be properly trained to respect the institution of home in line with the core international humanitarian law principles of distinction, proportionality and necessity. Military manuals, codes of conduct, standard operating procedures and regulations must reflect international prohibitions on the destruction of homes.

66. Many conflicts do not only result in the violation of human rights but are often also rooted in such violations. In places such as Côte d'Ivoire, Darfur, the Democratic Republic of the Congo, Liberia and Timor-Leste, conflict was driven in varying degrees by issues with a housing dimension, such as land disputes, insecurity of tenure and scarcity of resources (S/2007/643, para. 53). Human rights, therefore, is both the subject of protection as well as a tool for preventing its violation. States should therefore establish monitoring and early warning mechanisms that incorporate human rights as part of their risk assessments. By identifying emerging issues and risks, monitoring mechanisms serve as an early warning device that helps to prevent harm a priori. A human rights-prevention approach thus seeks to avert domicide by taking stock of the specific triggers and contexts of conflict where the destruction of homes takes place. This includes a comprehensive review of a State's own domestic framework in order to eliminate discriminatory provisions, policies and programmes that tend to sustain or exacerbate the existing inequalities that lie at the core of conflict, as well as identification of legal gaps in order to prohibit domicide, forced evictions and arbitrary displacement.

67. Independent bodies, such as national human rights institutions and, where applicable, United Nations fact-finding missions or commissions of inquiry, should be mandated to monitor and investigate the destruction of homes in conflict situations and State compliance with the rules and guidelines against arbitrary displacement. Monitoring mechanisms should actively maximize new forms of technology, such as satellite imagery, as well as machine learning, mobile devices and smart tools that allow and empower citizens and civil society organizations to utilize their own handheld devices as instruments to document and share severe human rights violations.⁵² To that end, it is important that monitoring mechanisms engage with the community members who are the most affected or threatened by domicide with a view to developing new strategies identified by the communities themselves. Monitoring reports and findings should be made publicly available in order to encourage further engagement and to promote the development of other best practices informed by shared experiences.

68. To prevent the continuing violation of housing rights, States have a duty to investigate, prosecute and punish the destruction of homes, especially when it constitutes an international crime. Criminalizing domicide may have a deterrent effect and help ensure its non-repetition. Introducing and enforcing legislation and policies prohibiting the deliberate destruction of homes constitutes a structural prevention tool in fulfilment of the duty of a State to guarantee non-recurrence as defined under the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Domicide is not a single, isolated act, but is usually implemented repeatedly and systematically over time. Accordingly, the prosecution

⁵² See, for example, Jon Unruh, "Deriving Countermeasures to the Use of Housing, Land and Property Rights as a War-Financing Commodity", pp. 10 and 14. Available at https://www.ohchr.org/sites/default/files/2022-05/Unruh_countermeasures-to-hpl-dislocation_trafficking_CFI-protecting-after-conflict.pdf.

of a single act of domicile may break the chain of housing destruction. In addition, accountability for past violations is essential in addressing the root causes that have led, and that might yet again lead, to conflict. The provision of remedies, including reparation for past violations of housing rights, is therefore key not only to punishing domicile, but also to preventing its reoccurrence.

69. The criminalization of the deliberate destruction of homes may go by different names and characterizations and need not be designated as “domicide”, per se. For example, at the national level, the Penal Code of El Salvador provides for the crime of “illegal limitation to the freedom of movement”, which punishes violence, intimidation or threat against people or property “carried out to force another to leave his/her place of domicile, residence, work, studies or of any lawful activity”. In Northern Ireland, the Protection of the Person and Property Act punishes “[a] person [...] if he unlawfully causes, by force, threats or menaces, or in any way whatsoever, any other person (a) to leave any place where that other person is for the time being resident or in occupation”. Before the International Criminal Court, in the case of *The Prosecutor v. Germain Katanga*, Katanga was sentenced to 12 years’ imprisonment for the attack on the village of Bogoro in Ituri Province of the Democratic Republic of the Congo. The Court characterized the attack as the war crime of “destroying or seizing the enemy’s property”. Notably, said case was referred to the Court by the Democratic Republic of the Congo, which illustrates how States might comply with their duty to prosecute grave human rights violations complementarily with international mechanisms.

70. Civil society is likewise key in preventing human rights atrocities. Through, inter alia, advocacy, monitoring, reporting, education, conflict prevention and resolution and reconciliation initiatives, civil society and human rights defenders play a crucial role in a system of checks and balances (A/HRC/25/55, para. 23). Civil society actors have a key role in building and facilitating the social cohesion and resilience of societies. While the lack of a strong, organized and representative civil society is noted as an indicator of increased risk of atrocity crimes, empirical evidence suggests correlations between an active, diverse and robust civil society and positive human rights indicators (A/HRC/37/65, para. 66). States therefore have an important role and positive duty in preventing domicile by granting defenders, especially journalists and media workers, access to information and spaces that will facilitate independent coverage and human rights monitoring and by ensuring that legal frameworks are not used to evade oversight or quell dissent.

V. Ensuring justice, reparation, restitution and reconstruction

71. All persons threatened with or subject to domicile have the right of access to timely remedy. Echoed throughout international law and regional instruments,⁵³ the right to an effective remedy embraces five formal categories of reparations: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Of those possible forms, the principle of *restitutio in integrum* (restitution to the original position) takes precedence. Principle 2 of the principles on housing and property restitution for refugees and displaced persons expressly provides that States must prioritize the right to restitution as the preferred remedy for

⁵³ See, for example, the International Covenant on Civil and Political Rights, art. 2; the International Convention on the Elimination of Racial Discrimination, art. 6; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 14; the Convention on the Rights of the Child, art. 39; the Convention respecting the Laws and Customs of War on Land, art. 3; Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 91; the Rome Statute, arts. 68 and 75; the African Charter on Human and People’s Rights, art. 7; the American Convention on Human Rights, art. 25; and the European Convention on Human Rights, art. 13.

displaced persons and as a key element of restorative justice. All displaced persons therefore have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore.

72. Restitution also includes the right of return to one's place of residence. The right of return is firmly recognized in international human rights law and international humanitarian law alike. Article 13 (2) of the Universal Declaration of Human Rights expressly recognizes that "[e]veryone has the right to leave any country, including his own, and to return to his country", while article 12 (4) of the International Covenant on Civil and Political Rights states that "[n]o one shall be arbitrarily deprived of the right to enter his own country." Similarly, article 132 of the Fourth Geneva Convention provides that "[t]he Parties to the conflict shall, moreover, endeavour during the course of hostilities, to conclude agreements for the release, the repatriation, the return to places of residence". Through general comment No. 27 (1999) on the freedom of movement, the Human Rights Committee recognized that "[t]he right to return is of the utmost importance for refugees seeking voluntary repatriation."

73. It must be emphasized that the right of return applies only to voluntary return. Persons, groups and communities must not be forced or otherwise coerced, either directly or indirectly, to return to their former homes, lands or places of origin. The exercise of the right to return must be based on a free, informed and individual choice. It is the prerogative of the rights holders and cannot be imposed upon them. Nor may the exercise of the right be subject to a statute of limitations. Notably, coercing victims of domicide to return to their homes would in and of itself constitute enforced displacement, in violation of international human rights law, international humanitarian law and international criminal law. Therefore, in order to facilitate an informed decision to return, displaced persons should be given complete, objective, up-to-date and accurate information, including on physical, material and legal safety issues in countries or places of origin.

74. When return is not possible, as may be the case in domicide or when the injured party knowingly and voluntarily accepts compensation in lieu of restitution, the injured parties are entitled to fair and just compensation for any losses of personal, real or other property or goods. Monetary compensation should not replace real compensation in the form of land and common property resources. Thus, where land has been taken, the victim of domicide should be compensated with land that is commensurate or better in terms of quality, size and value. That is not to say, however, that compensation for domicide is limited to the value of the physical structures of homes alone. Compensation should be provided for any economically assessable damage. Where the home and land also provide a source of livelihood, compensation must also account for the value of business losses, equipment/inventory, livestock, land, trees/crops and lost/decreased wages/income. As the impacts of domicide are not limited to isolated homes but communities at large, a combination of compensation and restitution may be appropriate so as to afford victims the opportunity to return to their land and to repair or rebuild.

75. States should ensure that restitution and compensation claims procedures are made accessible and implemented without discrimination. Women, regardless of marital status, are entitled to restitution and compensation in their own right and not merely accessorially. To that end, principle 13 of the principles on housing and property restitution for refugees and displaced persons provides for reparation through rehabilitation. States should ensure that adequate legal aid is provided, free of charge, if possible, to those seeking to make a claim. Medical and psychological care should also be provided in a manner attuned to the circumstances of persons needing special assistance, including persons who are illiterate or persons with disabilities. States

should ensure that no one is persecuted or punished for making a restitution or compensation claim. In shaping and enforcing those procedures, the rights of affected persons, groups and communities to meaningful participation must be respected. The needs of vulnerable individuals, including the elderly, single female heads of households, separated and unaccompanied children and persons with disabilities should be given particular attention. The institutionalization of structural changes that afford victims of grave human rights violations the opportunity to meaningfully participate in justice processes is in itself a facet of the right to a remedy, through satisfaction and guarantee of non-repetition.

VI. Conclusions and recommendations

76. There is a comprehensive framework embedded in international law prohibiting the arbitrary destruction of homes. However, today, most severe and systematic housing rights violations during violent conflict are met with impunity and their victims are without any effective legal remedy, restitution or compensation. That protection gap must urgently be closed by prohibiting such violations in national law and practice and ensuring that serious violations of economic, social and cultural rights, such as the right to adequate housing, are subject to appropriate sanctions.

77. In the view of the Special Rapporteur, the international community should give careful consideration to establishing domicile as a distinct crime under international law. Domicide is strongly associated with multiple other gross violations of civil, political, economic, social and cultural rights and has long-lasting effects for victims and survivors. As the home is essential for living in peace, security and dignity, there is no logical reason why it should not be afforded the same special protection as other non-military objects in international humanitarian law, such as places of worship, cultural heritage, demilitarized zones and the natural environment.

78. While domicile may also be prosecuted as a composite element to crimes against humanity, war crimes or the crime of genocide, consideration should be given to establishing domicile as a crime of its own standing. This could for example include listing domicile in the enumeration of acts constituting a crime against humanity or the judicial recognition of domicile as a distinct inhumane act.

79. In the view of the Special Rapporteur, defining domicile as a distinct crime would close protection gaps and help to ensure that severe, widespread and systematic violations of economic, social and cultural rights receive the same attention in international criminal law as any other gross violations of human rights.⁵⁴

80. Codifying domicile in domestic law would also prove vital in addressing situations of deliberate destruction of homes. This may be particularly important when the destruction of homes would not amount to a war crime or a crime against humanity or lacks the specific intent to destroy, in whole or in part, a national, ethnic, racial or religious group.

81. Domicide and other severe violations of the right to adequate housing must be investigated and prosecuted without discrimination, regardless of where it takes place and who is responsible for it. Time and again, international justice mechanisms have been criticized for applying double standards or for being

⁵⁴ For an early advocacy of the need for such recognition, see Balakrishnan Rajagopal, "In Asia, ethnic cleansing in the name of progress", *International Herald Tribune* (10 August 2001).

unable to serve justice in a fully impartial manner.⁵⁵ Indeed, the aggression of the Russian Federation against Ukraine has been met by an unprecedented international condemnation and investigative and prosecutorial efforts, including by the International Criminal Court. As admirable and necessary as they are, there is no denying that such actions are blatantly missing in other humanitarian crises, such as in Afghanistan or Palestine – both of which have had cases pending before the International Criminal Court for years without any tangible outcome. Double standards carry no favour and leave international law vulnerable to the critique that justice is not blind, that rule is subordinate to whim and that some are indeed more equal than others. If the international legal order truly stands for a rule of law, then it must be enforced with consistency, lest we permit inconsistencies to bunch up into hypocrisies, leaving international standards fulfilled only in small patches but undermined in the big picture.⁵⁶

82. To those ends, the Special Rapporteur calls upon States to:

- (a) Establish domicile as a distinct crime under domestic and international criminal law;
- (b) Ban the use of explosive weapons with wide-area effects in populated areas through a binding international treaty;
- (c) Align domestic law with international and regional obligations by:
 - (i) Ratifying international and regional instruments, including the Rome Statute of the International Criminal Court, that protect the right to adequate housing and that prohibit arbitrary displacement;
 - (ii) Ensuring that laws and policies prohibiting domicile and subjecting it to judicial accountability are enforced impartially and do not discriminate de jure or de facto;
- (d) Establish and enhance:
 - (i) Early warning mechanisms that fully integrate human rights standards to monitor and assess the rule of law so as to address the causes of domicile and prevent further violations;
 - (ii) Participation mechanisms for affected communities and victims of housing rights violations, including ethnic or religious minorities, women, children, lesbian, gay, bisexual and transgender persons, older persons and persons with disabilities, in order to understand and address their distinct and unique vulnerabilities and risks;
 - (iii) Enhance data collection and analysis of severe violations of the right to adequate housing, including through satellite and aerial imagery and by making tools for forensic documentation of domicile available to prosecution services, human rights defenders and affected communities;
- (e) Ensure that the actions of government officials and military and security forces are compliant with international humanitarian law, international human rights law and international criminal law, as applicable, by:

⁵⁵ Such criticism has, in the past, sometimes led to innovative mechanisms, such as mixed tribunals. See, for example, Balakrishnan Rajagopal, “The Pragmatics of Prosecuting the Khmer Rouge” in *Yearbook of International Humanitarian Law*, vol. 1 (The Hague, T.M.C. Asser Institute, 1998).

⁵⁶ See Raphael A. Pangalangan, “The unbearable whiteness of international law”, *Philippine Daily Inquirer*, 7 April 2022 and “‘Double standards’: Western coverage of Ukraine war criticised”, *Al-Jazeera*, 27 February 2022.

- (i) **Reviewing military manuals, standard operating procedures and other materials that guide military and security operations in order to fully incorporate international standards, in particular with regard to the protection of civilian objects;**
- (ii) **Providing training and capacity-building to build knowledge of and sensitivity towards the rights of communities affected by violence and conflict and the rights of internally displaced persons, mainstreaming a gender and diversity perspective;**
- (iii) **Providing training and adequate resources to prosecution services, lawyers and the judiciary for the investigation and prosecution of severe violations of the right to adequate housing;**
- (f) **Ensure reparation for victims of domicile, with priority given to restitution and the right of voluntary return, including support for rehabilitation and reconstruction;**
- (g) **Ensure that housing and land ownership records are registered and that cadastral records are, in addition, digitally archived and backed up in order to ensure that housing records remain protected during violent conflict and accessible for restitution or compensation claims whenever needed;**
- (h) **Provide adequate emergency housing and protective infrastructure for persons displaced by domicile and ensure that they have access, as quickly as possible, to durable housing solutions in conformity with the right to an adequate standard of living.**

83. The Special Rapporteur also calls upon stakeholders, civil society members and the international community to:

- (a) **Address domicile in a multidimensional manner by forging partnerships with a variety of stakeholders and to coordinate and share respective expertise between national and local authorities and humanitarian and development actors;**
- (b) **Raise awareness of domicile and provide legal aid to people who are victims or who are at risk of domicile;**
- (c) **Ensure that the specific legal and social barriers to women's enjoyment of housing, land and property rights are identified and removed;**
- (d) **Provide technical support, capacity-building and sensitization to Governments with a view to incorporating into domestic law international legal standards relating to the prevention of arbitrary housing destruction and displacement;**
- (e) **Support Governments in establishing and enhancing national, local and community-based early warning and early action mechanisms and in adopting and implementing human rights-based laws, policies and strategies to prevent domicile and its reoccurrence.**