

Mandate 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

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Excellency,

I have the honour to address you in my capacity as 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, pursuant to Human Rights Council resolution 31/9.

In this connection, I would like to bring to the attention of your Excellency's Government urgent information I have received concerning **the proposed amendment to the Melbourne City Council's existing *Activities Local Law 2009 (Principal Local Law)* via the proposed *Activities (Public Amenity and Security) Local Law 2017 (Amending Local Law)* which will allegedly target and negatively affect people experiencing homelessness.**

According to the information received:

In Victoria, Australia, there are currently/approximately 22,000 people experiencing homelessness and 33,000 people on the waiting list for public housing. According to the Melbourne City Council, there has been a 74 per cent increase in Melbourne's rough sleeping population over the two-year time period of 2014-2016, with 247 people sleeping rough in 2016.

In a public document, 'Report to the Future Melbourne (Finance and Governance) Committee' (Committee Report), the Council noted:

- Council officers routinely remove an average amount of 100–150 kilograms per week of accumulated belongings to landfill. The situation is exacerbated by donations of goods to people sleeping rough.
- In the past months, there has been an increase of public complaints about amenity, pedestrian flow, the open use of drug and aggressive begging. In particular, 52 complaints were received in 2014, 150 in 2015, 630 in 2016 and 118 complaints only for the month of January 2017.

On 1 February 2017, about a dozen people were forcibly removed from near the Flinders Street Station in Melbourne. Protesters who attended the eviction clashed with police in front of hundreds of bystanders. The police arrested five people and three officers were injured. During previous weeks before the eviction, the City of Melbourne had issued warnings that the camp would be removed so that work could begin to upgrade the railway station and announced homeless people would

have access to accommodation. The Victorian Minister of Housing confirmed that everyone in the camp had been offered these services and announced funding for 40 new transitional housing properties.

Under this mounting pressure, on 2 February 2017, the Melbourne City Council submitted the Committee Report suggesting some amendments to Principal Local Law via the Amending Local Law. The report exposes the rationale and purpose of the Amending Local Law including that it will “broaden the definition of camping and provide a process for responding to items left unattended in public place.”

On 7 February 2017, the City of Melbourne councillors voted 5-4 to open the Amending Local Law to public consultation for a period of 28 days. The outcome of this vote was met with further public protest.

After the conclusion of the consultation period on 17 March 2017, the City of Melbourne councillors will conduct a further vote regarding the introduction of the Amending Local Law, which would amend the Principal Local Law.

Changes proposed to the existing legislation

The proposed Amending Local Law is made under the provisions of Part 5 of the Local Government Act 1989 (Victoria) (Act). Under section 223 of the Act, any person who makes a written submission about amending the Local Law has a right to be heard by the Council’s Submissions Committee, which has the role of considering any submission received and making a recommendation to the Council. The Committee Report suggests the Council will assess the compatibility of the Amending Local Law with the human rights listed in Part 2 of the Charter of Human Rights and Responsibilities Act 2006 (Victoria).

The proposed amendments to the Principal Local Law are as follows:

- The Amending Local Law requires a permit for camping “in any public place”. Previously, camping was only banned in Melbourne if campers used a vehicle, tent or temporary structures. It is alleged that this amendment will effectively criminalise rough sleeping, although this may not be the intention, because homeless people are carrying out their lives in public spaces and do not have access to long-term affordable accommodation.
- The Amending Local Law also legalises the confiscation of items from public places and attaches a monetary release fee and time limit. It is reported that this has significant potential to disproportionately impact on rough sleepers, including due to the inevitability that items may be temporarily left (for example, when someone goes to get food or use the

bathroom) and the requirement to pay a recovery fee within a strict period of time to retrieve the belongings.

It is alleged that the proposed changes may entail some limitations on the human right to freedom of movement protected under section 12 of the Charter of Human Rights and Responsibilities Act 2006 (Victoria). In addition to the proposed amendments to the Principal Local Law, the Council is also proposing to launch a campaign discouraging people to donate goods to homeless people in an attempt to reduce landfill waste currently removed by the Council's authorised officers.

While I do not wish to prejudge the accuracy of these allegations, I wish to express my deepest concern that the Amending Local Law's broad drafting and discretion would create a significant risk that the changes will target and negatively affect people experiencing homelessness. It is alleged that people sleeping rough will be exposed to further enforcement, entrenched in the criminal justice system and isolated from supports. If approved, the new law will cause homeless people to move-on or they will be fined and caught up in the justice system (part 14 of the Principal Local Law provides for these enforcement powers). Homeless people will be forced from the city to outer areas where they will be more isolated from services, and therefore more vulnerable. The Amending Local Law appears directly contradictory to the simultaneous efforts of addressing the criminalisation of homelessness and the lack of affordable housing carried out by Australia.

I wish to draw the attention of your Excellency's Government to its obligations under article 11.1 of the International Covenant on Economic, Social and Cultural Rights ratified by Australia on 10 December 1975 which states that "[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right [...]". It is also the obligation of States Parties to guarantee that such rights will be exercised "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status", pursuant to article 2.2 of the Covenant.

I further recall general comments No. 4 and 7 of the Committee on Economic Social and Cultural Rights, which stress the need to provide adequate legal protection from forced eviction, as well as to guarantee due process, alternative accommodation, and access to an effective remedy of those that may be affected by eviction orders. According to these general comments, Australia must have further explored all feasible alternatives to forced eviction in consultation with the affected persons.

In this context, I call your attention to my reports on several central issues for the situation at hand, including: 1) on the obligations of subnational and local governments in the implementation of the right to adequate housing (A/HRC/28/62); 2) on homelessness and the right to adequate housing (A/HRC/31/54); and 3) on the intimate link between the right to life and the right to adequate housing (A/71/310). I also call your attention to two

instruments developed by my predecessors in the mandate: the Guiding Principles on security of tenure for the urban poor (A/HRC/25/54),; and to the Basic Principles and Guidelines on Development-based Evictions and Displacement.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, I would appreciate a rapid response on the initial steps taken by your Government to safeguard the rights of the persons of the above-mentioned community in compliance with international instruments.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide any updated information about the discussions concerning the Amending Local Law and the assessment carried out regarding its compatibility with the Charter of Human Rights and Responsibilities Act 2006 (Victoria) as well as international human rights standards.
3. Please explain the mechanisms and measures taken at the central level to provide guidance to municipalities and local governments in relation to their international human rights obligations concerning homelessness.
4. Please provide details of the measures taken to provide alternative accommodation to the displaced rough sleepers and to prevent them from continuing to experience homelessness. In this context, could you indicate how many of these homeless people were assisted to access housing units with supports?
5. Please provide details of how it is envisaged the proposed provisions in the Amending Local Law will be enforced at the local government level given the significant shortage of affordable housing in Australia and Victoria. In this context, will people be moved-on, fined or charged?
6. Please clarify what legal and administrative recourse options, in keeping with due process guarantees, that would be available and accessible to homeless people if the Amending Local Law is introduced, including the right to be heard and the right of access to an independent court.

I kindly ask you to provide a response at your earliest convenience. While awaiting a reply, I urge that all necessary interim measures be taken to safeguard the

rights of the approximately 250 rough sleepers in the City of Melbourne and the approximately 22,000 people experiencing homelessness across Victoria.

In light of the serious implications of these allegations and the risk of on-going and irreversible damage to the right to housing and other related human rights, I am considering the possibility of expressing these concerns publicly in the near future. If a press release is issued, it will indicate that I have been in contact with your Excellency's Government's to clarify the issues in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Leilani Farha

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