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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 communication No. 127/2019*, **

<i>Communication submitted by:</i>	Aicha Naser
<i>Alleged victims:</i>	The author and the three children in her care
<i>State party:</i>	Spain
<i>Date of communication:</i>	18 March 2019
<i>Date of adoption of Views:</i>	28 February 2022
<i>Subject matter:</i>	Eviction due to termination of lease
<i>Procedural issue:</i>	Failure to exhaust domestic remedies
<i>Substantive issue:</i>	Right to adequate housing
<i>Article of the Covenant:</i>	11 (1)
<i>Articles of the Optional Protocol:</i>	2 and 5

* Adopted by the Committee at its seventy-first session (14 February–4 March 2022).

** The following members of the Committee participated in the examination of the present communication: Aslan Abashidze, Mohamed Ezzeldin Abdel-Moneim, Nadir Adilov, Asraf Ally Caunhye, Laura-Maria Crăciunean-Tatu, Peters Sunday Omologbe Emuze, Ludovic Hennebel, Karla Vanessa Lemus de Vásquez, Seree Nonthasoot, Lydia Ravenberg, Preeti Saran, Shen Yongxiang, Heisoo Shin, Rodrigo Uprimny and Michael Windfuhr. In accordance with rule 23 of the rules of procedure under the Optional Protocol, Committee members Mohammed Amarti and Mikel Mancisidor de la Fuente did not take part in the examination of the communication.



1.1 The author of the communication is Aicha Naser, born in Al-Hoceima on 25 January 1961. The author is acting on her own behalf and on behalf of three minors in her care (at the time of submission of the communication): Mariam Ennasiri and Fatima Zohra Ennasiri, born in Larache on 27 March 2001; and Abdelkarim Naser, born in Madrid on 31 October 2007. All of them are nationals of Morocco. The author claims that she and the children in her care are victims of a violation of article 11 (1) of the Covenant by the State party. The Optional Protocol entered into force for the State party on 5 May 2013. The author is represented by attorneys Natalia Palomar González and Ana Romo Escribano.

1.2 In the present Views, the Committee will first summarize the information and the arguments submitted by the parties, without taking a position. It will then consider the admissibility and merits of the communication and, lastly, set out its conclusions and recommendations.

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

Factual background¹

Before registration of the communication

2.1 The author lives with three children in her care: she is the guardian of her twin nieces, Mariam Ennasiri and Fatima Zohra Ennasiri, owing to the death of their parents; the deceased father was the author's brother. Abdelkarim Naser has been living with the family since he was 2 years old, when his mother, a friend of the author's, was deported to her country of origin because she was in an irregular administrative situation and had no relatives who could care for him.

2.2 On 1 January 2007, the author entered into a lease for her current home. The author made her monthly rental payments in cash until 2016, when the landlords stopped coming to collect their monthly payments and the author's efforts to contact them proved unsuccessful.

2.3 In 2013, a financial institution initiated mortgage enforcement proceedings before Madrid Court of First Instance No. 32 against the owners of the property. On 3 October 2016, the mortgaged property was auctioned off and awarded to the enforcing entity. Once it was declared the owner of the property, the financial institution submitted a request to take ownership of the property, a request which was granted by an order issued on 10 May 2017. On 30 June 2017, the author was notified of the order.

2.4 Upon learning that the property she was renting had been auctioned off and awarded to a bank, as the landlords' creditor, the author submitted a letter to the Court, informing it of the existence of her lease and requesting that the terms of the lease be respected by the new owner.

2.5 In its decision of 5 September 2017, the Court noted that the contract was not registered in the Land Registry, and that its enforceability with third parties was therefore limited. In the present case, the Court ruled that the five-year period of protection provided for in article 13 of the Urban Tenancies Act in the event that the landlord's rights have been terminated as a result of mortgage enforcement had elapsed and that the author's right to occupy the property was therefore not recognized. According to the author, this decision on the issue of third-party occupancy closed the matter and does not allow for further appeal, based on article 675 (3) of Act No. 1/2000 of 7 January 2000, the Civil Procedure Act. The author explains that, although she has the option of filing an application for review, this is a mere formality, as the review will be carried out by the same body that issued the order.

2.6 On 8 February 2018, Madrid Court of First Instance No. 32 ruled in favour of the eviction of the former owners "and any other occupants of the property". The eviction was

¹ These facts have been reconstructed on the basis of the individual communication and the information subsequently provided by the parties in their observations and comments on the merits of the communication.

scheduled for 4 April 2018 at 11.30 a.m. On 16 March 2018, the author was notified of the eviction.

2.7 On 26 March 2018, the author submitted a brief to the Court pointing out her family's socioeconomic situation and requesting a stay of the eviction. She explicitly claimed a violation of their right to housing and of the Covenant in the event that the eviction was carried out despite her family's lack of alternative housing.

2.8 The author also requested emergency assistance from the social services. On 3 April 2018, the bank requested a stay of the eviction, following the intervention of the emergency housing services of Madrid city council, which proposed that the parties negotiate a social rental agreement.

2.9 At the request of the enforcing entity, the Evictions Section of the Notifications and Seizures Service of the Courts of Madrid set a new eviction date, this time for 13 February 2019 at 10 a.m. On 11 February 2019, the author filed a written submission with the Court requesting a stay of the eviction, given her lack of alternative housing, and again referring to the violation of the right to housing and the Covenant in the event that the eviction was carried out despite her family's lack of alternative housing.

2.10 By a decision dated 12 February 2019, the Court ruled that a stay of the eviction was not applicable in the case at hand, since the author had had sufficient time (more than two and a half years) to vacate the property and find alternative housing, unless the owner agreed to a postponement or agreed to negotiate a social rental agreement. The author claims that the decision signalled the exhaustion of domestic remedies, since lodging an appeal would not have had suspensive effect, and the eviction would have been executed in any event; therefore, the lodging of an appeal would not have prevented irreparable damage to her family.

2.11 On 13 February 2019, the eviction was suspended on site, following the intervention of the municipal emergency social services of Madrid city council, which confirmed the family's utter lack of alternative housing. A new eviction date was set for 29 March 2019, to which the property owner did not object.

2.12 The author states that, over the last few years, she has been receiving support from the municipal emergency social services of Madrid city council, specifically, assistance in various matters related to housing, administrative services and child services, as well as in applying for financial aid. Furthermore, since April 2018, she has received assistance from the association *Provienda* in looking for alternative accommodation, albeit unsuccessfully thus far. In addition, she has applied to two entities for public housing:

(a) Community of Madrid (Directorate General for Housing and Rehabilitation), in 2011, 2015, 2016, 2017 and 2018. No positive response has been received to date;

(b) Municipal Housing and Land Company of Madrid, on 23 May 2018 and 1 February 2019.

After registration of the communication

2.13 On 26 March 2019, the Committee registered the communication and requested the State party to take interim measures to avoid possible irreparable damage to the author and the minors in her care while the case was being considered by the Committee, inter alia by suspending the eviction or by providing alternative housing appropriate to their needs, in genuine and effective consultation with the author. On the same day, the author filed a written submission with Madrid Court of First Instance No. 32, informing it of the Committee's request for interim measures and requesting that her eviction be stayed.

2.14 On 28 March 2019, the Court declared the author's application inadmissible and requested that it be submitted through her solicitor as required by procedure. On 29 March 2019, when officers of the court appeared at the author's home to execute the eviction order, the author again presented the Committee's request. The property owner did not oppose a stay of the eviction, and so the eviction was stayed.

2.15 On 10 July 2019, the property owner again applied for enforcement of the eviction order. On 14 October 2019, Madrid Court of First Instance No. 32 ordered a new eviction

date to be set. On 25 October 2019, the author filed an application for the review of that order, in which she recalled her socioeconomic situation, lack of alternative housing and the Committee's request.

2.16 On 13 November 2019, Madrid Court of First Instance No. 32 dismissed the author's application for review, without prejudice to her right to seek assistance from the social housing administrative authorities.

2.17 On 18 November 2019, the author reapplied for emergency housing with the Madrid Directorate General for Housing and Rehabilitation. On 27 November 2019, the Court set a new date, 3 December 2019, for the eviction.

2.18 On 21 January 2020, the author was evicted. The social services of the municipality suggested that the author's nieces should go to a student residence, but the author rejected that option, as she was opposed to separating the family. The author also rejected, on the date of the eviction, the social services' offer to house the family in the family shelter run by the municipal emergency social services in Vallecas, consisting of shared accommodation in two rooms, with a total capacity of 30 places for stays of 15 to 30 days. On 24 January 2020, the welfare services for people in vulnerable housing situations in the Puente de Vallecas district offered the author a temporary housing alternative, consisting of an apartment share for six months. On 6 February 2020, the author rejected that offer because she was unable to ascertain the availability of places, the location of the apartment and its accessibility, and whether the family unit would be housed in the same apartment. According to the social services, the author and her family reportedly returned to live in the same property from which they had been evicted.

Complaint

3.1 The author underlines that, in becoming a party to the Covenant, Spain undertook to effectively promote the right to adequate housing and to provide means of accommodation for persons of limited means or at risk of eviction, in application of the principle of the progressive realization of rights and the exhaustion of remedies. The specific obligation to provide housing for persons who are at risk of being evicted and who have no alternative housing options derives directly from article 11 of the Covenant and from the Committee's general comments No. 4 (1991) and No. 7 (1997).

3.2 The author states that she is unable to obtain accommodation by her own means, owing to her social and family situation, with the family's sole income being a minimum subsistence income of 587.78 euros, provided by the Community of Madrid. The author is unemployed and her employability on the labour market is very limited, as she cannot read or write. The author submits that, in such circumstances, evicting her when she had no alternative housing is also contrary to the State party's obligations under the Covenant and constitutes in itself a violation of article 11 of the Covenant. The author recalls that she has stated in court that she has no alternative accommodation but that, nevertheless, the court proceeded with the eviction order, leaving it up to the enforcing entity to decide whether to postpone the eviction or even to let the property to the family by negotiating a social rental agreement. Attempts to achieve either of these two solutions have been unsuccessful thus far.

3.3 The author notes that the procedural legislation on enforcement of non-monetary decisions does not state² that homelessness may be considered as a ground for objection, nor is there any stage in the proceedings when the judge may assess the interests at stake in order to suspend the eviction. This human rights protection gap also constitutes in itself a violation of article 11 of the Covenant, specifically with regard to legal safeguards to give effect to rights.

State party's observations on admissibility and the merits

4.1 On 21 September 2020, the State party submitted its observations on admissibility and the merits of the communication. Supplementary information was received on 2 February

² At the time the individual communication was drafted.

2022. The State party first provided an update on the events that have taken place since the registration of the communication.³

4.2 Regarding the admissibility of the communication, the State party is of the view that the author has not exhausted all available domestic remedies. The author applied for social emergency housing but her application was rejected, a decision that the author did not appeal. According to Madrid city council reports, the municipal emergency social services offered the author temporary housing in Vallecas. The author did not accept that offer.

4.3 On the merits of the communication, the State party argues that the family's basic needs are covered by the State. The family has free access to one of the top ten health systems in the world; free access to the public education system for the children; a minimum subsistence income and support from the social services; free legal aid; and access to free or subsidized basic supplies, such as electricity, heating and water, and to minimum income support, as established by Royal Decree-Law No. 20/2020 of 29 May 2020. The needs of the family are therefore being met by public funds, to the extent of available resources.

4.4 The State party argues that the right to housing is not an absolute right to a particular dwelling owned by another person, nor is it an absolute right to be provided with housing by the authorities, if public resources are insufficient for the provision of such housing. The State party maintains that article 25 (1) of the Universal Declaration of Human Rights and article 11 (1) of the Covenant do not recognize an enforceable, subjective right, but rather establish a mandate for States to take appropriate measures to promote public policies aimed at improving access to decent housing for everyone. According to the case law of the Court of Justice of the European Union,⁴ the right enshrined in article 34 (3) of the Charter of Fundamental Rights of the European Union is not the right to housing but rather the right to housing assistance within the framework of social policies based on article 153 of the Treaty on the Functioning of the European Union. This State mandate has been expressly recognized in article 47 of the Constitution and various statutes of autonomy. In line with this article and according to the case law of the Constitutional Court,⁵ the right to housing is "a constitutional mandate or guiding principle" that calls primarily for social measures but does not in itself constitute a separate area of competence of the State. It is therefore the duty of the public authorities to create the conditions and establish the standards that will enable Spaniards to exercise their right to decent and adequate housing; the authorities do so, in particular, by regulating the use of land for the common good in order to prevent speculation. This right, which is to be realized progressively, is thus fully protected by the State party in line with its international obligations. The State party refers to the arguments set forth in similar communications concerning the efforts undertaken in the sphere of housing.

4.5 The State party argues that the two fundamental issues in assessing the fulfilment of its obligations under the Covenant are (a) that the State should cover the housing needs of those who do not have sufficient resources to secure housing, to the extent of the resources reasonably available to it, taking into account the situation of public finances; and (b) that when such resources are insufficient to cover all possible needs, housing allocations should be made on the basis of objective criteria and the principle of equality, so that they are satisfied in order of need.⁶

4.6 The State party understands that, for an individual communication to be admissible under article 11 (1) of the Covenant, the author must provide sufficient evidence (a) that he or she is in a situation of need inasmuch as he or she lacks the resources needed to gain access to the open housing market; (b) that the competent authorities have not devoted resources to the extent possible to meeting the housing needs of families in a genuine situation of social exclusion (including by adopting measures to facilitate access to and prevent withdrawal from the private housing market, by adopting emergency measures in cases where such

³ See paras. 2.13–2.18.

⁴ Court of Justice of the European Union, *Sánchez Morcillo and Abril García v. Banco Bilbao Vizcaya Argentaria SA*, case C-539/14, order of 16 July 2015, para. 49.

⁵ Constitutional Court Judgments No. 152/1988, No. 7/2010 and No. 33/2019.

⁶ The State party cites general comment No. 7 (1997), according to which States have an obligation to "take all appropriate measures, to the maximum of [their] available resources, to ensure that adequate alternative housing ... is available" (para. 16).

withdrawal is legally appropriate as a transition to the public housing system and by investing sufficiently in the public housing regime); (c) that, in the event that the available public resources are insufficient to cover all existing genuine needs, the allocation of scarce public resources has not been made in a rational and objective manner, addressing first and foremost the situations of those in greatest need; and (d) that he or she has not deliberately committed acts or been responsible for omissions that have kept him or her from receiving the assistance that is publicly available.

4.7 The State party submits that it has taken numerous measures to address the economic crisis, with a view to facilitating access to the private housing market for the purpose of buying or renting property;⁷ to keep property owners from leaving the private housing market;⁸ and to address situations of urgent need, by establishing judicial protocols for coordination with the municipal social services prior to evictions, thus making it possible to assess the need for, and to provide, emergency housing solutions.⁹ The social services are responsible for assessing and monitoring the needs of families.

4.8 The State party is of the view that article 11 of the Covenant does not apply to persons who are illegally occupying another person's property. The right to own property, individually or with others, is set forth in article 17 of the Universal Declaration of Human Rights and article 33 of the State party's Constitution. The protection of property, considered internationally to be a fundamental human right, ensures that property owners are able to satisfy their basic needs; they must therefore be protected from the arbitrary deprivation of their property. Accordingly, article 11 (1) of the Covenant cannot be used to sanction instances where the property of others is unlawfully appropriated, as in the present case. Moreover, in its general comment No. 7 (1997), the Committee recognizes that evictions are sometimes justifiable, including when a person is occupying another person's property, although they must be carried out in accordance with the law, with adequate legal remedies available to those affected, in a timely manner and in the presence of competent officials.

4.9 The State party recalls that the author rejected Madrid city council's offers of shelter and decided instead to occupy the property from which she had been evicted. Furthermore, her application for housing was approved and remained valid for one year, until 17 September 2021. The author did not then submit a new application, as she was occupying a property without legal title, which is grounds for the exclusion of social housing applicants. The State party adds that the author's application was placed on the waiting list and that she could not have changed her application's place on that list, which was established in order of priority in accordance with the principles of equality, transparency and objectivity. The State party therefore maintains that it has complied with all its obligations under the Covenant and that the communication is manifestly without merit, since the author's situation is the result of her own actions.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 11 February 2021 and on 7 January 2022, the author submitted her comments on the admissibility and merits of the communication.

5.2 She submits that she has exhausted all available domestic remedies. The author maintains that there was no way for her to appeal the rejection of her application for social

⁷ The State party cites, inter alia, a loan subsidy programme, a programme to fund building assessment reports and a rental housing assistance programme under the 2018–2021 State Housing Plan.

⁸ The State party cites the preamble to Royal Decree-Law No. 5/2017 of 17 March 2017, amending Royal Decree-Law No. 6/2012 of 9 March 2012 on urgent measures for the protection of destitute mortgagors and Act No. 1/2013 of 14 May 2013 on measures to enhance the protection of mortgagors, debt restructuring and social housing rentals. In addition, the State party explains that, between the adoption of the Code of Good Practices (2012) and 2017, more than 24,000 evictions were suspended, more than 45,600 families benefited under the Code from 38,500 debt restructurings and the transfer of 7,000 titles in lieu of payment, and 9,020 housing units were awarded through the Social Housing Fund.

⁹ The State party cites Royal Decree-Law No. 7/2019 of 1 March 2019 on urgent housing and rental measures, whereby socially vulnerable families may have their eviction suspended for one month, or three months if the owner is not a natural person.

emergency housing and that the offers of alternative housing were not adequate and therefore did not constitute effective remedies to prevent a violation of the Covenant.

5.3 The author clarifies her actions regarding the possibility of appealing the decision to deny her social emergency housing. She explains that she routinely submitted applications under the procedure for situations of particular necessity, not for situations of social emergency. Nevertheless, in April 2018, the Madrid Social Housing Agency automatically processed her application as a request for social emergency housing; the same Agency subsequently decided that the application did not satisfy the criteria for granting social emergency housing. On 2 August 2019, the author, suddenly faced with the threat of imminent eviction, also applied for social emergency housing; her application was rejected on 13 December 2019 on the same grounds as her previous application, which had been processed automatically under the social emergency housing procedure. The author states that the administrative authorities did not provide her with a copy of the relevant administrative decision, nor was she informed of the administrative body to which she could appeal or of the remedies available for her to challenge the decision. Furthermore, the author submits that legal action against that decision would be ineffective, since the decision itself indicates that the author's circumstances do not qualify as legal circumstances that may give rise to the allocation of social emergency housing. Indeed, under Decree No. 52/2016, an eviction is to be considered a situation of social emergency only if it is the result of "a sudden decrease in the family unit's income"; this is not the case for the author, whose eviction was the result of foreclosure against the landlords of the property and who has been in a chronic situation of financial vulnerability since 2008. Thus, the author clarifies that she applied for social emergency housing in August 2019 because of her desperate situation of imminent eviction, even though she knew that the application had no chance of success.

5.4 With regard to the offers she received from the administrative authorities, the author recalls that the options were either for her twin nieces to stay in a student residence, even though no details had been provided about the conditions there, or for the family to stay in a shelter run by the municipal emergency social services, on a temporary basis. After the eviction, she was also offered a six-month temporary housing alternative in an apartment share, but she was unable to ascertain the availability of places, the location of the apartment and its accessibility, and whether the entire family unit would be housed in the same apartment. Concerning the placement of the twins in a student residence, the author recalls a case in which the Committee found that an offer of accommodation that requires the splitting up of the family may be contrary to article 10 (1) of the Covenant, unless there are no other options available.¹⁰ The author submits that, in her case, no reason was given for the lack of other options that would have had a lesser impact on her rights under article 10 (1) of the Covenant. With regard to the offer made by the municipal emergency social services, the author notes that the offer constituted temporary accommodation, provided for only a short period of time, as was borne out in the aforementioned case.¹¹ Given the circumstances, the author contends that this option did not constitute an adequate housing alternative. The rejection of these offers therefore cannot be considered to constitute a failure on the author's part to exhaust remedies.

5.5 On the merits, the author submits that the fact that the right to adequate housing is not an absolute right does not mean that it should be interpreted as a constitutional mandate devoid of content. The author recalls that the Committee has already, on several occasions, found violations of the right to adequate housing in cases of eviction in Spain for failure to conduct an analysis of the proportionality of the interests that the eviction is intended to protect to the impact of the eviction on the rights of the persons evicted.¹² The author submits that the circumstances of her case are very similar to those that gave rise to previously issued Views, thus demonstrating that some institutional shortcomings have yet to be resolved. In particular, the author notes that the court of first instance did not automatically review the decision's compliance with the Covenant, nor did it weigh up the interests at stake.

¹⁰ *Ben Djazia et al. v. Spain* (E/C.12/61/D/5/2015), para. 17.7.

¹¹ *Ibid.*, para. 16.6.

¹² See *López Albán et al. v. Spain* (E/C.12/66/D/37/2018), para. 11.5, and *Gómez-Limón Pardo v. Spain* (E/C.12/67/D/52/2018), para. 9.5.

5.6 The author notes that, owing to the lack of available social rental housing and the long waiting list of social housing applicants, the only option available to the Social Housing Agency was to grant her housing through the social emergency procedure. However, as explained previously, under article 18 (1) of Decree No. 52/2016, social emergency housing can be granted in the case of an eviction only when the eviction occurs as a result of “a sudden decrease in the family unit’s income”. Families who were already in a situation of economic vulnerability but whose income remained constant prior to being evicted are therefore not protected by this provision. Paradoxically, this means that emergency housing cannot be granted even to people whose eviction has been suspended because of their situation of vulnerability, in application of the current Civil Procedure Act.¹³ The author adds that there are other aspects of the social housing scheme of the Community of Madrid that constitute additional barriers for particularly vulnerable people, such as unnecessary bureaucracy and the fact that housing applications must be resubmitted yearly, failing which requests for assistance are cancelled. The author submits that all of this constitutes indirect discrimination in violation of article 2 (2) of the Covenant, since there is a discriminatory effect against persons in a situation of chronic social exclusion, as compared to those who have suffered a decrease in their income. According to the author, this discrimination is based on the prejudice that those who have not striven to overcome situations of social exclusion do not deserve the same opportunities as those in a more advantageous financial and social situation who have had the misfortune to suffer a sudden loss of family income. The author recalls that, according to the Committee, property status is a prohibited ground of discrimination.¹⁴ The author therefore requests the Committee to find this requirement to be a violation of the Covenant and to recommend that the State party remove it from the criteria used when considering applications for social emergency housing.

5.7 Finally, the author states that there are systemic issues in securing alternative housing in the private rental market. She submits that the situation, both in the city of Madrid and in the Autonomous Community of Madrid, makes it very difficult to gain access to housing in normal conditions. The average rent in the capital stands at 848 euros and, in the Community of Madrid, at 780 euros, according to official data from the Ministry of Transport, Mobility and Urban Agenda.¹⁵ A total of 31.2 per cent of the population is not able to meet unforeseen expenses and 6.7 per cent have made late housing payments, according to the latest living conditions survey conducted by the National Institute of Statistics. A study by Oxfam Intermón indicates that there are 123,211 more people living in poverty in the Community of Madrid than at the beginning of the pandemic.¹⁶ Moreover, migrants, like the author, have even greater trouble finding housing in the rental market: a recent study by the association Provienda shows that 7 out of 10 real estate agencies are willing to make it more difficult for migrants to rent the properties they manage.¹⁷

5.8 All of this has affected the author directly. As the social services report provided by the State party states:

The district’s social services have offered her financial assistance to cover her basic needs and have informed her that she may be given additional support to pay the security deposit and first month’s rent, if she is able to find housing that she can afford, but that has not been possible to date. It is difficult to gain access to rental housing in the free market due to the guarantees and financial conditions required.

This statement makes clear that access to the current private rental market is impossible, even with financial assistance.

5.9 With regard to the State party’s assertion that its obligations depend on the resources it has available and the number of persons in need of such resources, the author recalls that, according to the Committee’s general comment No. 3 (1990), the adoption of legislative measures is particularly important for compliance with the Covenant, which “thus imposes

¹³ Amended by Royal Decree-Law No. 7/2019.

¹⁴ Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), para. 25.

¹⁵ Rental housing index.

¹⁶ Oxfam Intermón, “Superar la pandemia y reducir la desigualdad. Cómo hacer frente a la crisis sin repetir errores”, 2021, p. 14.

¹⁷ Provienda, “¿Se alquila? Racismo y xenofobia en el mercado del alquiler”, 2020.

an obligation to move as expeditiously and effectively as possible towards that goal” (para. 9). In that connection, the author clarifies that the autonomous communities are competent for housing-related matters and that, in the last ten years, many autonomous communities have adopted legislative measures to address the scarcity of housing.¹⁸ The Community of Madrid has not adopted any such measures and is the only region among those experiencing a crisis in the right to adequate housing that has not put in place protective housing regulations.

5.10 As for her access to minimum income support, the author states that she applied for such support on 19 June 2020; her application appears as having been rejected on the social security online portal, but she has not received notification of any decision in that regard.

5.11 As to the State party’s available economic and financial resources, the author submits that the State party has not provided sufficient grounds for asserting that it has reached the limit of its available resources, as it has only made vague statements and has not provided data to support such statements. Considering it proven that there is no housing available on the private market for vulnerable people like herself (see paras. 5.7–5.8), the author submits data on public housing applications and allocations in her region that show that the number of public housing allocations is much lower than the number of applications submitted. Between 2017 and 2021, the Madrid Social Housing Agency awarded a total of 648 housing units; during the same period, 34,400 applications were submitted. Thus, only 1.88 per cent of applicants were allocated housing. This can be explained by the lack of new housing developments and by the fact that the Agency sold off 7,215 of its units between 2008 and 2017, and another 519 units between 2018 and 2021, mostly to private companies. The author recalls that, in 2013, the Community of Madrid sold a lot of 2,935 public rental housing units, including ones with tenants living inside, to a financial institution. The author states that the institution terminated contracts and increased rents, in violation of the applicable regulations. In the end, the courts ruled that the authorities had not provided sufficient grounds for the sale, which as a result was declared null and void. Between 2018 and 2020, the Municipal Housing and Land Company of Madrid city council registered a total 35,777 public housing applicants and, over the same period, it allocated a total of 895 housing units, meaning that just 2.5 per cent of applicants were granted housing. Lastly, the author states that public housing represents just 1.82 per cent of the total housing stock in the region, which she considers to be an extremely low figure, far below the European average.

5.12 The author submits that the work of the social services on her case, although positive, has not been satisfactory, since it has been limited to processing her application for the minimum subsistence income and minimum support income and referring her to other entities for temporary housing remedies. The author considers it fully proven that her need for adequate alternative housing in the face of forced eviction from her home has not been addressed by the State party using public resources due to the fact that the Social Housing Agency does not consider the immediate loss of housing as a primary criterion in the housing allocation process. Indeed, despite the fact that her application was placed 274th on the waiting list on 26 July 2019, she has yet to be awarded housing. The author claims that the failure to provide her with housing has had serious consequences on her living situation, as it has effectively split up her family and in turn shaken her emotionally and hampered her essential development.

5.13 The author and the minor Abdelkarim Naser are currently in an unstable living situation: they move around, staying in various acquaintances’ homes, but do not have a

¹⁸ For example: Act No. 2/2003 of 30 January 2003 on housing in the Canary Islands; Act No. 2/2007 of 1 March 2007 on housing in the Autonomous Community of La Rioja; Act No. 18/2007 of 28 December 2007 on the right to housing in Cataluña; Act No. 24/2015 of 29 July 2015 on urgent measures to address the housing and energy poverty emergencies; Act No. 1/2010 of 8 March 2010, regulating the right to housing in Andalucía; Autonomous Community Act No. 10/2010 of 10 May 2010 on the right to housing in Navarra; Act No. 9/2010 of 30 August 2010 on the right to housing in the Community of Castilla y León; Act No. 8/2012 of 29 June 2012 on housing in Galicia; Act No. 6/2015 of 24 March 2015 on housing in the Region of Murcia; Act No. 3/2015 of 18 June 2015 on housing in the País Vasco; Act No. 8/2004 of 20 October 2004 on housing in the Community of Valencia; Act No. 2/2017 of 3 February 2017 on the social function of housing in the Community of Valencia; Act No. 2/2017 of 17 February 2017 on social emergency housing in Extremadura; and Act No. 5/2018 of 29 June 2018 on housing in the Illes Balears.

permanent address. Fatima and Mariam Ennasiri and Mohamed Ennasiri (Mariam Ennasiri's infant son), are living in the unit from which they were evicted, as they cannot be accommodated in the same homes in a stable fashion. The author states that the unit is in dreadful condition, full of damp and infested with cockroaches and slugs, and that the situation is causing health problems for the whole family, especially the 6-month-old baby. The owner filed a complaint against the author's nieces, who, on 30 November 2020, were convicted of a minor offence of unlawful appropriation and ordered to leave the unit. That ruling was appealed but eventually upheld on 30 June 2021 by the third section of the Provincial High Court of Madrid. A new eviction has not been ordered to date. The author adds that, although two of the alleged victims are occupying the dwelling without legal title, said occupation did not begin until after the eviction that she considers to be a violation of the Covenant; she also notes that people in situations of great socioeconomic vulnerability often resort to occupying a dwelling without legal title owing to the systemic shortcomings of the housing market.

5.14 Lastly, the author submits that her eviction on 21 January 2020, despite a lack of alternative housing and despite the Committee's request that the State party take interim measures, constituted a violation of the Optional Protocol.

B. Committee's consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 9 of its provisional rules of procedure under the Optional Protocol, whether or not the communication is admissible.

6.2 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 State party argues that the author has not exhausted all domestic remedies, firstly because the author did not file an administrative appeal against the decision by which her application for social emergency housing was denied and secondly because she rejected the housing alternatives that were offered to her (a student residence for the author's twin nieces or housing for the family in a shelter run by the municipal emergency social services). The Committee is of the view that, for the purposes of article 3 (1) of the Optional Protocol, "available domestic remedies" are all remedies available to the author in direct relation with the events that initially gave rise to the claimed violation and that, *prima facie*, may be reasonably considered as effective for remedying the claimed violations of the Covenant.¹⁹ The Committee notes that the principal complaint put forward by the author in her communication is that her eviction contravened the Covenant because she had no alternative housing. Therefore, the remedies that must be exhausted are, first of all, those directly related to the eviction, such as remedies aimed at preventing or delaying the eviction or serving to notify the courts of her lack of alternative housing. In this regard, the Committee notes that the author exhausted all available remedies aimed at preventing or delaying the eviction, since, when she was informed of the mortgage enforcement proceedings, she presented herself and attempted to assert her title to occupancy and, after exhausting that avenue, she repeatedly requested the suspension of the eviction on the grounds that she lacked alternative housing.

6.3 The Committee notes that the author has repeatedly and diligently applied for alternative housing since 2011. The Committee notes the State party's claim that the author's rejection of housing alternatives constitutes a failure to exhaust remedies. The Committee notes that the author claims that one of the housing offers would have involved splitting up the family, in violation of her rights under article 10 (1) of the Covenant, and that the other offer could not be considered an adequate alternative. The Committee is of the view that the adequacy of these alternatives is a matter closely related to the merits of the communication and, noting the author's diligence in applying for housing alternatives, declares this part of the communication admissible under article 3 (1) of the Optional Protocol.

¹⁹ *Moreno Romero et al. v. Spain* (E/C.12/69/D/48/2018), para. 8.2.

6.4 The Committee notes that the author also claims, in her comments on the admissibility and merits of the communication, that the requirements for the allocation of social emergency housing have discriminatory effects and that the denial of social emergency housing therefore constituted discrimination in her case. However, the Committee notes that the author has not sufficiently substantiated that the regulations in question affect the Covenant rights of a particular group on prohibited grounds of discrimination.²⁰ The Committee consequently finds this part of the communication inadmissible pursuant to article 3 (2) (e) of the Optional Protocol.

6.5 The Committee notes that the remainder of the communication meets the other admissibility requirements under articles 2 and 3 of the Optional Protocol and, accordingly, declares the communication admissible and proceeds to its 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 determine which facts may be considered proven. The author lived in a dwelling under a lease that was terminated following mortgage enforcement proceedings. The author was notified of this situation on 30 June 2017 and her lease was considered terminated by a court decision of 5 September 2017. On 8 February 2018, an order was issued for the eviction of the dwelling's occupants. The author requested a stay of the eviction on numerous occasions before she and her family were eventually evicted, on 21 January 2020. Between 2011 and at least 2019, the author applied for assistance, including for social housing, from the social services on numerous occasions.

7.3 After the eviction, the State party made the author two alternative housing offers, both of which the author rejected. Since then, two of the alleged victims have gone back to occupy, without legal title, the same dwelling from which they were evicted, while the author and the minor in her care are without a permanent address.

7.4 The author claims that her eviction violated her rights and those of the minors in her care to adequate housing, since they were evicted without any consideration of the consequences of the eviction or of the fact that they did not have alternative accommodation. The State party argues that the offers made to the author constituted housing alternatives to the maximum of its available resources.

7.5 In the light of the facts that the Committee has deemed to be relevant and of the arguments submitted by the parties, the question raised by the communication is whether the eviction of the author and the minors in her care constitutes a violation of the right to adequate housing. To answer this question, the Committee will begin by recalling its jurisprudence on protection against forced eviction. It will then examine the specific case of the author's eviction and address the issues raised in the communication.

Protection against forced eviction

8.1 The human right to adequate housing is a fundamental right central to the enjoyment of all economic, social and cultural rights²¹ and is inextricably linked to other human rights, including those set forth in the International Covenant on Civil and Political Rights.²² The right to housing should be ensured to all persons irrespective of income or access to economic resources,²³ and States parties should take whatever measures are necessary to achieve the full realization of this right to the maximum of their available resources.²⁴

²⁰ *Trujillo Calero v. Ecuador* (E/C.12/63/D/10/2015), para. 13.2.

²¹ Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), para. 1.

²² *Ibid.*, paras. 7 and 9.

²³ *Ibid.*, para. 7.

²⁴ *Ibid.*, para. 12.

8.2 Forced evictions are prima facie incompatible with the Covenant and can only be justified in the most exceptional circumstances.²⁵ 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 proportionality by weighing up the legitimate objective of the eviction and its consequences for the evicted persons.²⁶ 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.²⁷

8.3 Thus, in order for an eviction to be justifiable, it must meet a number of requirements. Firstly, the limitation must be determined by law. Secondly, it must promote the general welfare in a democratic society. Thirdly, it must be suited to the legitimate purpose cited. Fourthly, the limitation must be necessary, in the sense that if there is more than one measure that could reasonably be expected to serve the purpose of the limitation, the least restrictive measure must be chosen. Lastly, the benefits of the limitation in promoting the general welfare must outweigh the impacts on the enjoyment of the right being limited. The more serious the impact on the author's Covenant rights, the greater the scrutiny that must be given to the grounds invoked for such a limitation.²⁸ The availability of suitable alternative accommodation, 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 properties belonging to individuals who need them as a home or to provide vital income and properties belonging to financial institutions or other entities.²⁹ The State party will therefore be committing a violation of the right to adequate housing if it stipulates that a person whose rental contract is terminated must be evicted immediately irrespective of the circumstances in which the eviction order would be carried out.³⁰ 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 analyse 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.³¹

8.4 In addition, there must be a real opportunity for genuine prior consultation between the authorities and the persons concerned, there must be no alternative means or measures available that would encroach less on 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.³²

Duty of States to provide alternative housing to persons in need

9.1 Evictions should not render individuals homeless or vulnerable to the violation of other human rights. 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.³³ 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 entities such as the owner of the property.³⁴ 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

²⁵ *Ibid.*, para. 18, and general comment No. 7 (1997), para. 1.

²⁶ *Ben Džazija et al. v. Spain*, para. 13.4.

²⁷ *Gómez-Limón Pardo v. Spain*, para. 9.4.

²⁸ *Ibid.*

²⁹ *López Albán et al. v. Spain*, para. 11.5.

³⁰ *Ibid.*, para. 11.7.

³¹ *Ibid.*

³² *Ben Džazija et al. v. Spain*, para. 15.1.

³³ General comment No. 7 (1997), para. 16.

³⁴ *Ben Džazija et al. v. Spain*, para. 15.2.

measures, to the maximum of its available resources, it has been unable to uphold the right to housing of the person concerned. 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.³⁵

9.2 The obligation to provide alternative housing to evicted persons who need it implies that, under article 2 (1) of the Covenant, States parties must take all necessary steps, to the maximum of their available resources, to uphold this right. States parties may choose a variety of policies to achieve this purpose.³⁶ However, any measures taken should be deliberate, concrete and targeted as clearly as possible towards fulfilling this right³⁷ as swiftly and efficiently as possible. Policies on alternative housing in cases of eviction should be commensurate with the need of the persons concerned and the urgency of the situation and should respect the dignity of the person. Moreover, States parties should take consistent and coordinated measures to resolve institutional shortcomings and structural causes of the lack of housing.³⁸

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. They include the following: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; a geographical location which allows access to social facilities (education, employment options, health-care services); and cultural adequacy, such that expressions of cultural identity and diversity may be respected.³⁹

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.⁴⁰ It must also take account of the right of members of a family not to be separated⁴¹ and to enjoy a reasonable level of privacy.

Analysis of the proportionality of the eviction

10.1 The Committee will consider whether the author's eviction from the dwelling she was occupying constituted a violation of her right to adequate housing or whether the authorities' intervention constituted a justified limitation on her right to housing in accordance with article 4 of the Covenant. The author has not claimed that due process guarantees were not observed, and none of the information before the Committee suggests that the process was arbitrary.

10.2 The Committee recognizes that the State party has a legitimate interest in ensuring protection for all rights established in its legal system so long as this does not conflict with the rights contained in the Covenant.⁴² It was established in court that the author's legal title was terminated; the Committee considers that there were legitimate reasons for her eviction.

³⁵ *Ibid.*, para. 15.5. See also the Committee's statement regarding an evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the Covenant ([E/C.12/2007/1](#)).

³⁶ General comment No. 4 (1991), para. 8 (c). See also paragraph 13.

³⁷ General comment No. 3 (1990), para. 2. See also the letter of 16 May 2012 from the Chair of the Committee to the States parties to the Covenant.

³⁸ See, for example, 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 ([A/HRC/31/54](#)), paras. 28–38.

³⁹ General comment No. 4 (1991), para. 8.

⁴⁰ *López Albán et al. v. Spain*, paras. 9.1–9.4.

⁴¹ *Ibid.*, para. 9.3.

⁴² *Ibid.*, para. 11.5.

10.3 However, despite the author's claim that the eviction would affect her right to adequate housing, the court in question did not consider the proportionality of the eviction by weighing up its legitimate objective and its consequences. At no time did the court evaluate the impact of the measure on the rights of the author and her family, despite the author's request and provision of documentation in that regard. Although the eviction was suspended several times between March 2018 and January 2020, those suspensions, according to the relevant decisions themselves, were possible only because the owner agreed to them. Furthermore, the State party's legislation has not provided the author with any other judicial mechanism through which to challenge the eviction order that would have given another judicial authority the opportunity to analyse the proportionality of the eviction or the conditions in which it was going to be carried out. The Committee finds, therefore, that the failure to conduct such an assessment constitutes a violation by the State party of the right of the author and the minors in her care to housing under article 11 of the Covenant, read in conjunction with article 2 (1).

Interim measures and eviction of the author and the minors in her care

11.1 The author claims that the fact that her eviction took place despite the Committee's request for the adoption of interim measures with regard to her case amounts to a violation of article 5 of the Optional Protocol. The Committee recalls its jurisprudence according to which the adoption of interim measures pursuant to article 5 of the Optional Protocol is vital to the Committee's effective performance of the role entrusted to it under the Optional Protocol, and States parties, by assuming the obligations under the Optional Protocol, commit to cooperating with the Committee in good faith.⁴³

11.2 The Committee notes that the State party's authorities considered the author's request for social emergency housing and that the State party claims to have offered the author alternative housing, to the maximum of its available resources, its last offer being to place the family in a shelter run by the municipal emergency social services, an offer which the author refused. The author argues that she refused the offer because the alternative housing was only temporary and did not meet the necessary requirements to constitute an adequate alternative. The Committee notes that the offer was for emergency temporary housing, but there are no further details in the file on the conditions of the shelter. It has not been substantiated, therefore, that this temporary emergency housing alternative is not compatible with standards of human dignity or that it does not comply with security requirements or provide reasonable levels of privacy that would prevent irreparable damage to the author and the minors in her care. The Committee is therefore of the view that it has not been established that the State party has not acted in good faith in relation to the Committee's request for interim measures and it cannot conclude that article 5 of the Optional Protocol has been violated in this case.

D. Conclusions and recommendations

12. The Committee, acting under article 9 (1) of the Optional Protocol, finds that the State party violated the author's right and that of the minors in her care to an effective remedy under article 11 (1) of the Covenant, read in conjunction with article 2 (1). In the light of its Views on the present communication, the Committee makes the following recommendations to the State party.

Recommendations in respect of the author and her family

13. The State party is under an obligation to provide the author with an effective remedy. The Committee notes that the author's eviction has already been carried out and considers that, taking into account the specific circumstances of the violation in the present case, the adoption of the present Views constitutes a measure of satisfaction that provides the author with appropriate reparation, so that there is no need to recommend financial compensation. In these circumstances, the Committee considers that the State party should, in particular: (a) undertake genuine consultation with the author to examine her family's needs in terms of

⁴³ *Loor Chila et al. v. Spain* (E/C.12/70/D/102/2019), paras. 7.1–7.3.

suitable alternative housing and, if necessary, provide her with such housing; and (b) reimburse the author for the legal costs reasonably incurred in submitting the present communication.

General recommendations

14. 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 the 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 of their Covenant rights 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 involving persons who do not have the means of obtaining alternative housing are carried out only following genuine consultation with the persons concerned and once the State party 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 or other persons in vulnerable situations;

(c) Develop and implement, in coordination with the autonomous communities and 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).⁴⁴ This plan should establish the resources, measures, indicators, time frames and evaluation criteria necessary to guarantee these individuals' right to housing in a reasonable and measurable manner.

15. In accordance with article 9 (2) of the Optional Protocol and rule 18 (1) of the provisional 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.

⁴⁴ See also the Committee's concluding observations on the sixth periodic report of Spain (E/C.12/ESP/CO/6), para. 36.