The International Right to Housing, Evictions and the Obligation to Provide Alternative Accommodation

A Comparison of Indonesia and the Netherlands

Michel Vols

Professor in Public Order Law, Faculty of Law, Department of Legal Methods,
University of Groningen, Groningen, the Netherlands
m.vols@rug.nl

Erna Dyah Kusumawati

Teaching Staff at the Department of International Law, Faculty of Law,
Universitas Sebelas Maret, Surakarta, Indonesia
erna.d.kusumawati@staff.uns.ac.id

Abstract

This article analyses if, and how, the international right to housing obliges states to protect the victims of justifiable evictions, particularly evictions due to rent arrears. It concerns a comparative analysis of practices in one Asian and one European jurisdiction: Indonesia and the Netherlands. The study juxtaposes measures adopted by each of the governments, regarding their obligations to protect tenants from eviction and to rehouse them post-eviction. As the use of rental accommodation in Indonesia is increasing, a comparison with the Netherlands – where rental accommodation has a prominent role – is beneficial. One significant finding is there is a grey area regarding the protection of people who are evicted due to rent arrears. Although states should protect these victims in the same way as they do people affected by (urban) development, it is unclear how far this protection should go. In the absence of parameters for such protection, the two countries have adopted measures to prevent victims from becoming homeless. The Netherlands protects tenants by providing legal mechanisms against the threat of eviction, and by providing adequate shelter for such victims. Indonesia also shows its intention to protect tenants, by adopting an ad hoc policy to help tenants pay their rent. These measures both seem to be effective, yet there is still a pivotal need for more structured frameworks.

Keywords

right to housing – eviction – rental housing – ICESCR – ESCR – the Netherlands – Indonesia

1 Introduction

Over 165 states have ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and, as a result, are bound by the obligations stemming from the right to housing, as laid down in Article 11 of that treaty.¹ Such worldwide recognition does not, however, guarantee the right to housing is well implemented at the national level. Previous research has shown implementation of the right to housing remains a prominent problem; one faced by both developed and developing countries.²

The academic body of knowledge on the international right to housing is growing rapidly.³ Studies on the right to housing discuss and assess a wide range of topics concerning housing, such as housing discrimination, public housing schemes, the fight against sub-standard housing, and the loss of one's home.⁴ Yet, the exact meaning and scope of the right remain unclear. In this article, we maintain the right to housing should be conceptualised as interconnected *rights to housing* - meaning that, by analysing legislation, case law

- 1 Status of Ratification Interactive Dashboard, available at <indicators.ohchr.org/> accessed 3 October 2020.
- 2 See Ingrid Westendorp, *Women and Housing: Gender Makes a Difference* (Intersentia 2007); Jessie Hohmann, 'The Right to Housing' in Markus Moos (ed), *A Research Agenda on Housing* (Edward Elgar 2019).
- 3 Padraic Kenna, 'Housing Rights: Positive Duties and Enforceable Rights at the European Court of Human Rights' (2008) 13 EHRLR 193; Jessie Hohmann, *The Right to Housing: Law, Concepts, Possibilities* (Hart 2013); Michelle Oren, Rachelle Alterman and Yaffa Zilbershats, 'Housing Rights in Constitutional Legislation: a Conceptual Classification' in Padraic Kenna (ed), *Contemporary Housing Issues in a Globalized World* (Ashgate 2014); Sarah Fick and Michel Vols, 'Best Protection Against Eviction? A Comparative Analysis of Protection Against Evictions in the European Convention on Human Rights and the South African Constitution' (2016) 3 EJCL 40; N Moons, *The Right to Housing in Law and Society* (Routledge 2018); Michael Kolocek, *The Human Right to Housing in the Face of Land Policy and Social Citizenship* (Palgrave 2017); Padraic Kenna, 'Introduction' in Padraic Kenna, Sergio Nasarre-Aznar, Peter Sparkes & Christoph U Schmid (eds), *Loss of Home and Evictions Across Europe* (Edward Elgar 2018).
- 4 Michel Vols and Alexandre C Belloir, 'Tackling Rogue Landlords and Substandard Housing: The Legal Instruments at the Disposition of Local Authorities and Their Effectiveness. What Can We Learn From the Dutch?' (2019) 1 Journal of Property, Planning and Environmental Law 2.

and research literature, several rights can be distinguished. Our article will predominantly focus on the protection provided by the right to housing. Research has shown that legal security of tenure is at the heart of this right, because without this element, people can be subjected to seizure at any time.⁵ One question remains: How far should the protection against eviction reach, in order to comply with the requirements stemming from international human rights law, more specifically, from Article 11 of the ICESCR?

Before we can answer this question about protection, we first need to clarify how we define the concept of eviction. General Comment (GC) No 7, adopted by the Committee on Economic, Social and Cultural Rights (CESCR), shows various types of evictions can be distinguished. One way to differentiate between evictions is to focus on the reason for the eviction, or on the context in which it takes place. First, there are *war and armed conflict-based evictions*. These evictions 'take place in connection with forced population transfers, internal displacement, forced relocations in the context of armed conflict, mass exoduses and refugee movements',⁶ as a result of 'international armed conflicts, internal strife and communal or ethnic violence'.⁷ Second, GC No 7 deals with *development evictions*. These evictions are carried out 'in connection with conflict over land rights, development and infrastructure projects, such as the construction of dams or other large-scale energy projects, with land acquisition measures associated with urban renewal, housing renovation, city beautification programmes, the clearing of land for agricultural purposes, unbridled speculation in land, or the holding of major sporting events like the Olympic Games'.⁸ Third, there are evictions which take place 'in the case of persistent non-payment of rent or of damage to the rented property without any reasonable cause'.⁹ According to the CESCR, these evictions 'may be justifiable', hence the name we give to them in this article: *justifiable evictions*.¹⁰

Another relevant way to differentiate between evictions is to focus on the legal protection provided to (prospective) evictees. Under international human rights law, *forced evictions* are to be distinguished from *unforced evictions*. The GC No 7 defines forced eviction as 'the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to,

5 Hohmann (n 3) p 21.

6 UN CESCR, 'General Comment No. 7: Article 11 (1) (The Right to Adequate Housing: Forced Evictions)' (20 May 1997) UN Doc E/1998/22 (General Comment 7) [5].

7 *ibid* [6].

8 *ibid* [7].

9 *ibid* [11].

10 *ibid*.

appropriate forms of legal or other protection.¹¹ The expression ‘forced eviction’ ‘seeks to convey a sense of arbitrariness and of illegality’.¹²

With the above in mind, this article addresses the question of what legal protection should be provided to people affected by justifiable evictions. More precisely, given Article 11 of the ICESCR obliges that people should be given protection against justifiable evictions, this article mainly concerns evictions due to persistent non-payment of rent by comparing eviction practices and protection offered in the Netherlands and Indonesia. The article also analyses the boundaries of the right to housing, by asking: How far do states have to go in providing protection against evictions, offering alternative accommodation, and preventing homelessness and social exclusion?

Although evictions have been addressed in the research literature,¹³ the issue of justifiable evictions and the protection provided by the right to housing against this type of eviction have not been analysed in detail. Moreover, research on evictions predominantly deals with domestic laws, and is often solely focused on developed countries in North America and Europe.¹⁴ This article aims to contribute to a wider and deeper understanding of the actual and legally required international and national protections against eviction, by taking into account both an Asian and a European jurisdiction, and by comparing these jurisdictions with one another.

As mentioned above, research on evictions in Asian contexts is scarce, and the available research primarily focuses on evictions as a result of mega projects, re-development projects, or armed conflict.¹⁵ Yet, we believe justifiable evictions will become more and more relevant in Asian jurisdictions, and in developing countries in general, in the near future. Our hypothesis is that the more developed a country becomes, the more often the *justifiable reason eviction* will occur, compared to evictions due to urban renewal or war. Recent studies of evictions in European countries and the United States show

11 *ibid* [3].

12 *ibid*.

13 See Michel Vols, Alexandre C Belloir, Mareike Hoffmann and Andrew J Zuidema, ‘Common Trends in Eviction Research: a Systematic Literature Review’ in Michel Vols and Christoph U Schmid (eds), *Houses, Homes and the Law* (Eleven Publishing 2019).

14 See Matthew Desmond, *Evicted: Poverty and Profit in the American City* (Crown Books 2016); Kenna 2018 (n 3); Vols *et al* 2019 *ibid*.

15 See Vols *et al* 2019 (n 13). See also Gautam Bhan, *In the Public's Interest: Evictions, Citizenship, and Inequality in Contemporary Delhi* (University of Georgia Press 2016); Katherine Brickell, Melissa Fernández Arrigoitia and Alexander Vasudevan, ‘Introduction’ in K Brickell, M Fernández Arrigoitia and A Vasudevan, *Geographies of Forced Eviction* (Palgrave 2017).

that rent or mortgage arrears are now the primary pathways to eviction and homelessness.¹⁶

The Asian jurisdiction under review in this article is Indonesia. We selected this country because it is expected justifiable reason evictions will affect low-income brackets of the population in future, as a result of a relatively recent shift in national housing policy. In recent decades, the Indonesian government's efforts to build flood prevention systems, its beautification of cities programmes, and its national target to eradicate slums in 2019,¹⁷ have all forced people to vacate their illegal settlements.¹⁸ This often involved forced evictions. Yet, the victims of these forced evictions were given a choice to move into rented public housing. Recent research, conducted by the Jakarta Legal Aid Institute, shows an increase in these newly rehoused eviction victims' living costs—especially in their housing-related expenses. They also experienced a drop in their income.¹⁹ This fact affects tenants' ability to pay the rent: around 43 per cent of tenants experienced rent arrears.²⁰ Based on their tenancy agreement with the Jakarta Government, the tenants can be evicted if they do not pay two months' rental fee consecutively.²¹

In this article, we compare the Indonesian situation with Dutch eviction practices and protection, by conducting a functional comparative analysis of

¹⁶ See Kenna 2018 (n 3); Desmond (n 14).

¹⁷ The National Programme is called 100-0-100 and was launched by the Ministry of Public Works and Public Housing. The government has targeted 100 per cent access to safe and clean drinking water, 0 percent slums and 100 percent of adequate sanitation by the end of the third National Medium-term Development Plan in 2019. See Indonesia, Law No 17/2007 on the Long-Term National Development Plan 2005–2025 (*Undang-Undang No. 17/2007 tentang Rencana Pembangunan Jangka Panjang Nasional 2005–2025*) SG 33/2007 and Presidential Regulation No. 2/2015 on National Medium-Term Development Plan 2005–2019 (*Peraturan Presiden No. 2/2015 tentang Rencana Pembangunan Jangka Menengah Nasional Tahun 2015–2019*) 8 January 2015.

¹⁸ United Nations General Assembly, 'Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and the right to freedom from discrimination, Raquel Rolnik' (26 December 2013) UN Document A/HRC/25/54/Add.1.

¹⁹ Alldo Felix Januarydy *et al*, *Mereka Yang Terasing: Laporan Pemenuhan Hak Atas Perumahan Yang Layak Bagi Korban Penggusuran Paksa Jakarta Yang Menghuni Rumah Susun* (Lembaga Bantuan Hukum Jakarta 2016) 43–57.

²⁰ *ibid* 58–59.

²¹ Tenancy Agreement for Jakarta rented public housing, the file is in the possession of the authors and is available in Bahasa Indonesia. See also, for example, the Governor Regulation of DKI Jakarta No. 111/2014 on Tenancy Mechanism in the Rented Public Housing (*Mekanisme Pengunian Rumah Susun Sederhana Sewa*) Annex Format 1 on the default Rental Agreement for the Prospective Tenants of the Rented Public Housing; see also, Januarydy *et al* (n 19).

the law in the two jurisdictions. This functionalist approach is one of the best 'working tools in comparative legal studies';²² it conceives the law as a body of rules to solve problems which exist in, and are shared by, numerous societies.²³ Instead of focusing on doctrinal legal concepts and the law in the books only, this approach focuses on how the law responds to society's needs in the field.²⁴ As such, we also take the wider housing context and data on the law in action (if available) into account in our analysis.

The analysis focuses on Indonesia and the Netherlands for a number of reasons. First of all, we do not want to adopt a Eurocentric stand on precarious housing and the right to housing; we intend to analyse both an Asian and a European country. Although we acknowledge the economic and political contexts of these countries are different, both countries have ratified the most comprehensive instrument guaranteeing the right to adequate housing, i.e. the ICESCR. Our study will predominantly compare the (legal) measures adopted by each of the governments, regarding their international obligations to protect evictees. When interpreting the results, we of course need to take into account the different political, cultural and socio-economic contexts of the countries under review. Furthermore, this research will provide rich data on evictions caused by rent arrears, which are prevalent not only in developed countries but also in developing countries such as Indonesia. This research is one of the first studies to examine in an intercontinental fashion the level of protection against eviction required by the international right to housing.

The rest of this article is divided into four parts. The first part will discuss the right to housing at the international level in greater detail, including the legal protection against eviction. The next two parts contain an analysis of the legal frameworks for the protection of evictees, and the measures adopted by the two countries' governments with regard to eviction caused by non-payment. These sections will also contain more information on the housing context in both countries under review, including the nature of the rented housing sector in each country and governmental involvement in the sector. In the last part, a comparative legal analysis is conducted to ascertain if, and how, both jurisdictions comply with the requirements stemming from the international right to housing. The final part presents our conclusions.

22 Michele Grazidei, 'The Functionalist Heritage' in Pierre Legrand and Roderick Munday (eds), *Comparative Legal Studies: Traditions and Transitions* (CUP 2003).

23 Esin Örüçü, 'Developing Comparative Law' in Esin Örüçü and David Nelkin (eds), *Comparative Law: A Handbook* (Hart 2007).

24 Grazidei (n 22).

2 International Law and Protection Against the Loss of One's Home

The right to adequate housing, as enshrined in the ICESCR, involves a set of obligations that should be fulfilled by states. It requires states to *respect*, *protect*, and *fulfil* the right, to be achieved progressively and in accordance with a state's maximum available resources.²⁵ The obligation to *respect* the right to housing means states are to refrain from interfering with the enjoyment of economic, social and cultural rights.²⁶ States must also refrain from practices that violate a person's right to respect for their private life and home. The obligation to *protect* requires states to prevent violations by third parties.²⁷ In other words, a state must protect its population from, for example, the activities of a landlord or private developer violating people's right to housing. The obligation to *fulfil* entails that states are obliged to adopt appropriate legislative, administrative, budgetary, judicial, and other measures, towards the full realisation of the right to housing.²⁸

More specific details on the required level of protection against eviction can be found in GCs Nos 4 and 7 of the CESCR. In the following section, we will analyse first what these two GCs tell us about the international protective requirements. We will then assess the CESCR opinion in the case of *Ben Djazia & Bellili v Spain* (2017).

2.1 General Comments (GC) Nos 4 and 7

As mentioned above, GC No 7 defines the concept of forced eviction as 'an act to permanently or temporarily remove individuals, families, or communities, against their will, from their homes and/or land, without the provision of, and access to appropriate forms of legal or other protection.'²⁹ This definition seems clear, and it is widely used in the research literature.³⁰ Yet, a close reading of the GCs reveals the meaning of 'forced eviction' as a concept might be slightly more ambiguous. For example, in GC No 4 the Committee holds that 'all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and

25 See Manisuli Ssenyonjo, *Economic, Social and Cultural Rights in International Law* (Hart 2009).

26 Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, January 22–26, 1997, [6].

27 *ibid.*

28 *ibid.*

29 *ibid* [3].

30 See, for example, Kenna 2018 (n 3).

other threats'.³¹ If we replace the term 'forced eviction' with the full definition stated above, this statement looks like a circular argument. In short, the CESCR holds here that *legal protection* should be provided against evictions happening *without the provision of, and access to appropriate forms of legal or other protection*. Basically, the Committee states legal protection should be offered if no legal protection is available—and if no legal protection is offered in case of an eviction, that eviction would qualify as a forced eviction.

There are further confusing elements of the CESCR interpretation of the concept of forced eviction. For example, in GC No 4 the Committee holds that 'instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant'.³² The words *prima facie* indicate that it is not absolutely clear if an absolute ban on forced evictions is applicable under international law. In the same GC, the Committee seems to acknowledge forced evictions may be justified, stating forced evictions 'can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law'.³³ In a similar fashion, in GC No 7 the CESCR leaves the possibility for *permissible forced evictions* open, referring to 'one of the most critical issues, namely that of determining the circumstances under which forced evictions are permissible'.³⁴

What *is* clear, however, is that under international law not all evictions are forbidden. The CESCR holds that the prohibition of forced evictions does not 'apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights'.³⁵

Although the terminology used by the Committee in the GCs is not clear, we maintain international law requires states to offer people legal protection against *all* evictions, irrespective of the reason for the eviction. If this protection is not provided and an eviction takes place, this eviction should be characterised as a 'forced eviction', and as such, it should *always* result in a violation of international law. Yet, this does not mean international law imposes an umbrella ban on all evictions, but it does forbid the lack of protection against evictions, regardless of whether they are justifiable or unjustifiable.

31 United Nations Committee of Economic Social and Cultural Rights (UN CESCR), 'General Comment No. 4: Article 11 (1) (The Right to Adequate Housing)' (13 December 1991) UN Doc E/1992/23 (General Comment 4) [8a].

32 Maastricht Guidelines (n 26) [18].

33 *ibid* [18].

34 General Comment 7 (n 6) [2].

35 *ibid* [3].

The GCs mention numerous obligations concerning protection against evictions that stem from the ICESCR. First, there are a number of general obligations. The state itself 'must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out evictions'.³⁶ Therefore, it should adopt legislation to protect people against evictions. This is 'an essential basis upon which to build a system of effective protection'.³⁷ This legislation should include measures which 'provide the greatest possible security of tenure to occupiers of houses and land', and need to conform with the ICESCR.³⁸ The measures should also be 'designed to control strictly the circumstances under which evictions may be carried out'. The legislation should apply to 'all agents acting under the authority of the State or who are accountable to it'.³⁹ The legislative and other measures should be 'adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies'.⁴⁰

If an eviction is considered justified, the state should ensure the eviction is carried out 'in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality'.⁴¹ An eviction can only take place 'in cases envisaged by the law'.⁴² Moreover, extra attention should be given to the prevention of evictions of 'women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups'.⁴³ The State should take appropriate measures 'to ensure that no form of discrimination is involved'.⁴⁴

In addition to these general obligations, more detailed procedural obligations are applicable regarding protection against evictions. These obligations are mentioned in GC No 7. First, states should explore all feasible alternatives to eviction 'in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force'.⁴⁵ Second, some obligations concern consultation and information. There should be an opportunity for genuine consultation with those affected by an eviction.⁴⁶ All affected persons

³⁶ *ibid.*

³⁷ *ibid* [9].

³⁸ *ibid.*

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ *ibid* [14].

⁴² *ibid.*

⁴³ General Comment 7 (n 6) [10].

⁴⁴ *ibid.*

⁴⁵ *ibid* [13].

⁴⁶ *ibid* [15].

should be given adequate and reasonable notice, prior to the scheduled date of eviction. Information on the proposed eviction should be provided, and this information should be made available in reasonable time. Third, the GC lays down rules concerning the way in which evictions need to be carried out. Government officials, or their representatives, should be present during the eviction, 'especially where groups of people are involved'.⁴⁷ All persons involved in carrying out the evictions should be properly identified. The eviction should not take place in 'particularly bad weather or at night unless the affected persons consent otherwise'.⁴⁸ Lastly, the GC stresses the need for legal protection again. Legal remedies should be provided, and 'where possible' legal aid to 'persons who are in need of it to seek redress from the courts'.⁴⁹ All the individuals concerned should have the right to adequate compensation for any property affected. An effective remedy needs to be assured, if that right is violated.⁵⁰

The CESCR also addresses the situation after the actual eviction has taken place. It holds that 'evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights'.⁵¹ It maintains, in any case where the persons 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'.⁵²

This section shows the definition of the legal concept of (forced) evictions is rather ambiguous. The GCs do not provide much clarity in this regard. In any case, based on current international human rights law, forced evictions are prohibited. Nonetheless, it seems implausible for countries to achieve zero evictions. In other words, a total prohibition of (forced) evictions is unattainable.⁵³ The ban on forced evictions must be read as a ban on not offering protection against evictions, irrespective of the aim or reason for the eviction. In case of justifiable evictions a state still has to meet requirements laid down in GCs Nos 4 and 7. It is the state's legal obligation under international law to prove the eviction is a last resort and can be justified. In addition, a state has to prove all necessary measures to avoid eviction have been exhaustively

47 *ibid.*

48 *ibid.*

49 *ibid.*

50 *ibid* [13].

51 *ibid* [16].

52 *ibid.*

53 See Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights, A Perspective on its Development* (OUP 1995).

employed. The obligation to employ necessary measures is further developed by the CESCR in its case law relating to the right to housing, i.e. in the *Ben Djazia & Belilli* case discussed below.

2.2 *The Ben Djazia & Belili case (2017)*

How this international legal framework should be applied in individual eviction cases, can be found in, for example, the *Ben Djazia & Belili* case adopted by the CESCR.⁵⁴ The case concerns a complaint submitted by two Spanish tenants who, together with their two children, were evicted from their room in a rental apartment during the Spanish housing crisis. After the tenants went into rent arrears, their private landlord terminated the rental contract and requested the court to oblige them to vacate the room. The court allowed the landlord's claim, and the tenants and their children were evicted, with the assistance of the police. They stayed in a temporary municipal shelter for ten days, until the authorities told them to leave the shelter. After leaving the shelter, the family slept in their car and in a place of an acquaintance; at the time of the eviction, they did 'not have sufficient income to enable them to seek alternative housing'.⁵⁵ Ultimately, Ben Djazia and Belili lodged a complaint with the CESCR that the Spanish State violated their right under Article 11(1) ICESCR.⁵⁶

According to the CESCR, international law protects people living in rental accommodation against forced eviction.⁵⁷ This means the State should ensure people who face 'the termination of contractual relations relating to rent, have access to effective and appropriate judicial remedies'.⁵⁸ The CESCR acknowledges eviction due to the expiry of a lease is a dispute between private individuals, and that the eviction is therefore not directly initiated by the authorities. Yet, the Committee maintains 'the State party has an obligation to, inter alia, guarantee that the eviction does not infringe article 11 (1) of the Covenant'.⁵⁹ As a result, the scope of the provisions of the ICESCR 'extends to relations between individuals'.⁶⁰

The CESCR holds that an eviction of people living in rental accommodation may be compatible with the ICESCR, but also that the requirements discussed

54 UN CESCR, *Mohamed Ben Djazia and Naouel Bellili v Spain*, Communication No. 5/2015, UN Doc. E/C12/55/D/2/2014 (21 July 2017) (*Djazia and Bellili v Spain*). See also CESCR, *I.D.G. v Spain*, Communication No. 002/2014, UN Doc No. E/C12/55/D/2/2014 (13 October 2015).

55 *Djazia and Bellili v Spain*, *ibid* [2.19].

56 *ibid* [3.1].

57 *ibid* [13.3].

58 *ibid* [13.4].

59 *ibid* [14.1].

60 *ibid* [14.2].

above need to be met.⁶¹ Even so, the eviction 'should not render individuals homeless'.⁶² A State is obliged '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 an individual such as the lessor'.⁶³ Further, the state 'must demonstrate that it has considered the specific circumstances of the case and that, despite having taken all reasonable measures, to the maximum of its available resources, it has been unable to uphold the right to housing of the person concerned'.⁶⁴ According to the CESCR, Spain had 'an even greater duty to justify the outcome because the authors' minor children, who were approximately 1 and 3 years old, were affected'.⁶⁵ In the case of *Ben Djazia & Belili*, the Committee ruled Spain had not submitted reasonable arguments to demonstrate it was impossible to provide Ben Djazia and Belili with alternative housing.⁶⁶

This case was brought before the CESCR under the individual complaint procedure stated in the Optional Protocol to the ICESCR.⁶⁷ This procedure can only be employed by citizens of states which have ratified the Optional Protocol. Up to June 2020, seven cases under the individual complaint procedure relating to the right to housing had been examined by the Committee.⁶⁸ However, in only four out of seven the Committee has adopted its views on the cases in question.

The *Ben Djazia* case was the first one related to a (justifiable) eviction from a rental home conducted by private actors. This case might provide a stronger legal basis for protection for this type of eviction. Prior to the adoption of the individual complaint procedure, the Committee only addressed the issue of eviction (and other issues related to the general economic, social and cultural rights) in concluding observations. Due to its nature, a concluding observation is likely to be more general, as the Committee has to address all other human rights protected in the Covenant. Although the documents can also show how the Committee addresses human rights issues based on the Covenant and the GCs, the individual complaint procedure offers the opportunity for more in-depth legal reasoning.

61 *ibid* [15.1].

62 *ibid* [15.2].

63 *ibid*.

64 *ibid* [15.5].

65 *ibid*.

66 *ibid* [7.8].

67 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, adopted on 10/12/2008, entered into force 5 May 2013, UNTS Vol 2922.

68 See <juris.ohchr.org/search/results> accessed 3 October 2020.

Following the *Ben Djazia* case, there were two other cases brought before the Committee concerned with evictions from rental homes: *Lopez Alban et al v Spain (Lopez Alban)*⁶⁹ and *Rosario Gomez-Limon Pardo v Spain (Pardo)*.⁷⁰ Lopez Alban was evicted because she occupied a house without a legal title, and Pardo had to leave her home because her contract ended. Both of these causes are considered as justified causes for eviction. Nevertheless, the Committee held that even though the causes are justifiable, states parties still have to consider the effect of the eviction for the affected persons, as to whether necessary legal protection has been provided, any alternative housing has been provided for the persons and generally the eviction is proportional.

In these two cases, the CESCR based its reasoning on that in the *Ben Djazia* case. For example, in *Lopez Alban*'s case, the Committee emphasised 'the 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.'⁷¹ Similar wording was used in the *Ben Djazia* case.⁷² Further, the Committee also alluded to the obligation to provide alternative housing, which is derived from the obligation to take all necessary steps to the maximum of their available resources under Article 2(1), ICESCR.⁷³

In the *Pardo* case, the CESCR emphasised the need to consider whether an eviction is proportional and does not harm the human right to adequate housing. The Committee again based its reasoning on the *Ben Dazia* and *Lopez Alban* cases to consider an eviction that was conducted immediately after the contract is terminated could possibly violate the right to housing if the state did not pay sufficient regard to 'the circumstances in which the eviction order would be carried out.'⁷⁴ According to the CESCR, a 'conditional' eviction order can be issued to arrange a negotiation with the affected persons concerning all possible options including the extent of the suitable alternative accommodation or personal circumstances.⁷⁵

From these three cases, it can be concluded the CESCR is rapidly developing its case law on the international right to housing. Such development

69 Committee on Economic, Social and Cultural Rights, *Maribel Viviana López Albán v Spain*, Communication No. 37/2018, UN Doc No. E/C.12/66/D/37/2018 (29 November 2019) (*Lopez Alban*).

70 Committee on Economic, Social and Cultural Rights, *Rosario Gómez-Limón Pardo v Spain*, Communication No. 52/2018, UN Doc No E/C.12/67/D/52/2018 (14 April 2020) (*Pardo*).

71 *Lopez Alban* (n 69) [9.1].

72 *Ben Djazia* (n 54) [15.2].

73 *Lopez Alban* (n 69) [9.2]. See also General Comment 4 (n 31) [8(c)] and [13].

74 *Pardo* (n 70) [9.5]; *Lopez Alban* (n 69) [11.7].

75 *Pardo* (n 70) [9.6]; *Lopez Alban* (n 69) [11.7].

emphasises the existence of the states' international obligation to provide an alternative (adequate) accommodation in the event of eviction. This obligation is applicable to all evictions regardless of the type of the tenure as well as the legal status of the accommodation. This section has shown the existence of such a legal obligation based on the ICESCR itself and the interpretation of the Committee both in its GCs and its case law. Thus, it can be concluded the practice of the Committee established the current state of the law on the prohibition of evictions, especially on how the right to adequate housing of the affected people can be upheld when an eviction occurs.

3 Justifiable Evictions under Indonesian Law

Now that we have established the international legal framework with regard to protection against justifiable evictions and analysed how the requirements should be understood, we will assess whether two State parties are complying with these international requirements. We will start with the assessment of Indonesian law. However, before we focus on the legal safeguards with regard to eviction provided by Indonesian law, a brief but necessary overview of the Indonesian housing (law) context is given. We analyse how the right to housing is implemented in Indonesia, and describe the tenure system and composition of the housing sectors in Indonesia. In addition, we assess the measures provided by the Indonesian government to help less affluent people gain access to affordable housing. We then evaluate the Indonesian legal framework regulating justifiable evictions, such as evictions because of rent arrears. We will also present and analyse data concerning the number of this type of eviction in the Indonesian public housing sector. Lastly, we examine the legal position of tenants who are ordered to leave their rental premises due to rent arrears.

3.1 *The right to housing in Indonesia*⁷⁶

The Indonesian national legal system has recognised human rights related to housing in several of its regulations, as well as through the ratification of international instruments and other legislation adopted by the ministries in charge of public works, housing, and social affairs.

⁷⁶ For a more detailed discussion with regard to the right to housing in Indonesia, see Erna Dyah Kusumawati, *Realising the Human Right to Adequate Housing in Indonesia through Accountability as a Process* (Dr Phil Thesis, University of Groningen 2019); see also ED Kusumawati, A Hallo de Wolf and MMTA Brus, 'Access to Public Housing for Outsiders: A Practice of Indirect Discrimination in Decentralised Indonesia' (2018) 19 APJHRL 238.

Article 28H(1) of the Amended Indonesian Constitution of 1945 stipulates that Indonesian citizens are entitled to live in physical and spiritual prosperity, to have a home, to enjoy a good and healthy environment, and have the right to obtain medical care.⁷⁷ This article does not, however, state a right to housing per se; nevertheless, it stipulates '*hak untuk bertempat tinggal*', which translates into English as literally *the right to a place to live*. This right has a broader meaning than just a right to shelter or a building providing a roof over one's head. With regard to the Amendment, the preparatory works of the People's Consultative Assembly of the Republic of Indonesia (*Majelis Permusyawaratan Rakyat*-MPR) do not mention the meaning of 'place to live'.⁷⁸

To understand the meaning of the right, we need to take other relevant articles of the Indonesian Constitution into account. For example, Article 28G(1) of the Indonesian Constitution lays down the right to the protection of family and property. Furthermore, Article 28H(4) provides a stronger protection for the right to property, by mentioning that property cannot be arbitrarily taken over by someone else. Although the *travaux préparatoires* do not mention the meaning of these two articles, they assert the importance of adding human rights provisions, in line with the human rights principles enshrined in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights, the ICESCR, and the 1993 Vienna Declaration and Programme of Action.⁷⁹

Therefore, the principles referred to when adopting human rights provisions in the Constitution are similar to those of the international human rights instruments. This choice is mirrored in the formulation of economic, social and cultural rights provisions. The Constitution includes the right to a place to live, the right to property, and the right to protection of family life, all of which resemble the formulation of such rights in the UDHR and ICESCR. It can be concluded 'the right to a place to live' may also be regarded as referring to the right to adequate housing, as enshrined in the international human rights treaties.

Consequently, by reading the three articles mentioned above, combined with the reference to international treaties by the drafters, the 'right to a place

77 This article was adopted in 2002, when the Constitution was amended.

78 Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia (MKRI) - (The Constitutional Court of the Republic of Indonesia), *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945: Latar Belakang, Proses dan Hasil Pembahasan 1999–2002, Buku VII Warga Negara dan Penduduk dan Hak Asasi Manusia*, Edisi Revisi, (MKRI 2010) Chapter IV, 213.

79 Mahkamah Konstitusi Republik Indonesia (MKRI), *Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945: Latar Belakang, Proses dan Hasil Pembahasan 1999–2002, Buku VIII tentang Warga Negara dan Penduduk, Hak Asasi Manusia dan Agama* (Sekretariat Jenderal dan Kepaniteraan MKRI 2010) Chapter IV, 169.

to live' can be interpreted as the right to housing, which protects housing as a structure *and* as a place to live. Moreover, it relates to the significance of housing as a home in which to live (with or without a family), and as a home from which to establish relationships with the surrounding community and environment.

Moreover, the Indonesian government has enacted several national laws on housing, such as Law No 1/2011 on Housing and Settlement⁸⁰ and Law No 20/2011 on Tower Blocks,⁸¹ in order to guarantee the right to housing, particularly for the poor wishing to access affordable housing through one of the housing tenure mechanisms available in Indonesia.⁸² These laws mandate the national government to be the main duty bearer in housing the poor, by establishing national housing policies to be implemented at the local level. Local governments are also responsible, however.⁸³ For example, the national government will provide funding for the development of public housing, but the distribution, management and maintenance of such buildings are in the hands of local governments.

Lastly, Indonesia ratified the ICESCR in 2005. As a result, the country is obliged to comply with any requirements enumerated in the Covenant. Under Article 7 of Law No 39/1999 on Human Rights (SG No 165/1999), any international human rights treaty ratified by the government becomes national law. Therefore, by virtue of this article, Indonesia is bound by all human rights obligations with regard to the right to housing, as stipulated in Article 11 of the ICESCR, including all authoritative interpretations provided by the CESCR regarding the right in question.

3.2 *The tenure system and housing sectors in Indonesia*

It is not known how many premises house the Indonesian population of 255 million. There is no exact data concerning the number of houses in Indonesia. However, we do know that Indonesia is experiencing a significant housing backlog: 15,000,000 Indonesians lacked housing in 2014.⁸⁴ This backlog grows continuously, because less than 400,000 formal houses can be built each year.⁸⁵

80 Law No 1/2011 on Housing and Settlement Areas (*Undang-Undang No. 1/2011 tentang Perumahan dan Kawasan permukiman*) SG No. 7/2011.

81 Law No 20/2011 on Tower Blocks (*Undang-Undang No. 20/2011 tentang Rumah Susun*) SG No. 108/2011.

82 See the purpose of the Law on Housing and Settlement Area (n 80) in the Consideration part and art 3.

83 Law No 1/2011 (n 80) see for example arts 5, 14, 15, 171, 18, 19(2), 38–40 & 131; see also art 9 Law 23/2014 on Local Government (*Undang-Undang No. 23/2014 tentang Pemerintahan Daerah*) SG 244/2014.

84 Nugroho Tri Utomo, Affordable Housing Finance Policies in Indonesia, World Bank (2014).

85 *ibid.*

With regard to housing types and tenures, the Indonesian census distinguishes several types of housing tenure.⁸⁶ First, people can live in a house with an ownership title (*hak milik*). Second, people can reside in a home on the basis of a fixed contract (*kontrak*). This refers to formal leasing, which is evidenced by the existence of a written agreement between a tenant and landlord, in which the tenant agrees to pay a certain amount of money regularly for a fixed term (for instance, one or two years). The schedule for payment will depend on the agreement and may be paid either as one lump sum or as several periodic instalments. Third, there might be a ‘rent’ (*sewa*). This refers to a relationship between a tenant and landlord, in which the tenant pays the rent regularly, without any limit in terms of how long the tenant will stay, as long as they pay the rental fee. Fourth, a rent-free housing situation (*magersari; ngindung*) can exist. This refers to a mechanism in which people stay on someone’s piece of land or house without any payment. This type of settlement is rampant in cities which still have palace grounds - Yogyakarta and Surakarta, for instance. Fifth, people may live in an official residence granted to them due to their job (*rumah dinas*). Sixth, people can reside with their parents or relatives. Lastly, there are other types of tenure, such as communal or *adat* land.⁸⁷ All the various types of housing tenure are shown in Table 1, below.

TABLE 1 **Percentage of households, based on housing tenure 2011-2014** (adapted from data available at the National Statistical Agency)

Housing Tenure	2011	2012	2013	2014
Ownership	78.77	80.18	80.08	79.77
Contract/Lease	4.12	3.57	3.71	3.74
Rent	4.55	4.67	4.35	4.63
Rent-free	1.96	1.59	1.49	1.39
Official residence	1.65	1.48	1.45	1.46
Parents or relatives	8.76	8.32	8.74	8.85
Other	0.19	0.19	0.17	0.15

SOURCE: BADAN PUSAT STATISTIK (BPS), ‘INDIKATOR KESEJAHTERAAN RAKYAT 2013’ (BPS 2013), <WWW.BPS.GO.ID/WEBSITE/PDF_PUBLIKASI/WATERMARK%20_INDIKATOR%20KES-EJAHTERAAN%20RAKYAT%202013.PDF >; BPS, ‘INDIKATOR KESEJAHTERAAN RAKYAT 2015’ (WELFARE INDICATORS 2015) (BPS 2015), <WWW.BAPPENAS.GO.ID/FILES/DATA/SUMBER_DAYA_MANUSIA_DAN_KEBUDAYAAN/INDIKATOR%20KESEJAHTERAAN%20RAKYAT%202015.PDF>, BOTH ACCESSED ON 3 OCTOBER 2020.

86 These categorisations are also used for the national socio-economic census in Indonesia, which is conducted by the National Statistical Agency (BPS).

87 The term *adat* has been used extensively in foreign literature on the sociology and origins of Indonesian society. It refers to a society or group sharing specific norms and values

Tables 1 and 2 show the dominant type of tenure in Indonesia is home ownership. Still, between 2011 and 2017 the percentage of households living in a home they owned decreased from nearly 78 per cent to approximately 71 per cent. As a result, the number of people relying on less secure types of tenure, such as lease/rental, increased significantly. The percentages of such tenures almost doubled from 2014 to 2015; from then on, they experienced a continual gradual growth until 2017.

There are a number of reasons for this change in the composition of the housing sectors. First, people are tending to rent or lease houses rather than buy them, due to a sharp increase in house prices. Housing prices in Indonesia increased by over 3 per cent in the third quarter of 2017,⁸⁸ compared with 2016.

TABLE 2 **Percentage of households, based on housing tenure 2015-2017** (adapted from data available at the National Statistical Agency website)

Housing Tenure	Urban and Rural Areas		
	2015	2016	2017
Ownership	73.87	73.96	70.92
Contract/Lease/Rent	14.99	15.38	16.51
Rent-free	9.85	9.24	11.24
Official residence	1.30	1.42	1.33

SOURCE: BPS, ‘STATISTIK KESEJAHTERAAN RAKYAT 2015’ (BPS 2015) <[HTTPS://WWW.BPS.GO.ID/PUBLICATION/2015/12/22/1AD0C6E3D452A3878E5ECB5E/STATISTIK-KESEJAHTERAAN-RAKYAT-2015.HTML](https://www.bps.go.id/publication/2015/12/22/1AD0C6E3D452A3878E5ECB5E/STATISTIK-KESEJAHTERAAN-RAKYAT-2015.HTML)>; BPS, ‘STATISTIK KESEJAHTERAAN RAKYAT 2016’ (BPS 2016) <[HTTPS://WWW.BPS.GO.ID/PUBLICATION/2016/12/29/9D7AC6DBA1FBF8BBB00792B8/STATISTIK-KES-EJAHTERAAN-RAKYAT-2016.HTML](https://www.bps.go.id/publication/2016/12/29/9D7AC6DBA1FBF8BBB00792B8/STATISTIK-KES-EJAHTERAAN-RAKYAT-2016.HTML)>; BPS, ‘STATISTIK KESEJAHTERAAN RAKYAT 2017’ (BPS, 2017) <[HTTPS://JAKARTA.BPS.GO.ID/PUBLICATION/2017/12/29/9CDB305EE78B056493E28271/STATISTIK-KESEJAHTERAAN-RAKYAT-PROVINSI-DKI-JAKARTA-2017.HTML](https://jakarta.bps.go.id/publication/2017/12/29/9CDB305EE78B056493E28271/STATISTIK-KESEJAHTERAAN-RAKYAT-PROVINSI-DKI-JAKARTA-2017.HTML)>, ALL ACCESSED ON 3 OCTOBER 2020. NOTE THAT TABLES 1 AND 2 ARE TAKEN FROM THE SAME SOURCE, HOWEVER THE INSTITUTION (BPS) USED DIFFERENT CATEGORIES WHEN CONDUCTING ITS SURVEY/CENSUS. IN 2015-2017, BPS COMBINED THE CATEGORIES OF ‘RENT FREE’, ‘PARENTS/RELATIVES’ AND ‘OTHERS’ INTO ONE CATEGORY, I.E. “RENT FREE”, AND OMITTED THE OTHER TWO CATEGORIES.

which characterise them, and differentiate them from other societies. Such societies have lived on a specific area of land for generations.

88 Bank of Indonesia, ‘Residential Property Price Survey for Primary Houses’ - Third Quarter of 2017 (Jakarta 2018) <<http://www.bi.go.id/en/publikasi/survei/harga-properti-primer/Documents/PISRT%20SHPR%20TW%20III-2017%20E.pdf>> accessed 3 October 2020.

Second, the shift towards more rental accommodation might be the result of the resettlement programmes adopted by local governments, moving people from informal settlements to rented public housing. Third, the government has switched its national policy on public housing from ownership to tenancy tenure, due to the limited availability of land.⁸⁹

Rental housing has been known to provide shelter for lower income people in Indonesia for decades.⁹⁰ Data collected by the Indonesian Statistical Agency shows that people in urban areas live in rented accommodation (16.5 per cent) more often than those in rural areas (less than 2 per cent).⁹¹ For instance, Jakarta has a fairly low percentage of owner-occupied housing (47 per cent), and the rest is rented/leased accommodation (20 per cent), informal rented (13 per cent), and other types of tenure (20 per cent).⁹²

Another way to describe the Indonesian housing sector is to differentiate between the informal and formal housing sectors.⁹³ The most common housing sector in Indonesia is informal housing: approximately 70 per cent of the total housing supply is informal. The main characteristic of this sector is that it is unplanned⁹⁴ and unregulated.⁹⁵ It relies on self-help build homes,⁹⁶ and government support for infrastructure is lacking. Housing in the informal

89 Interview with technical planning officials from the Office of Housing and Governmental Building, Jakarta, 19 September 2016.

90 Michael L Hoffman, Raymond J Struyk and Kristin Nelson, 'Rental Housing in Urban Indonesia' (1989) 15 *Habitat International* 181.

91 BPS, 'statistik kesejahteraan rakyat 2017', <<https://jakarta.bps.go.id/publication/2017/12/29/gcdb305ee78b056493e28271/statistik-kesejahteraan-rakyat-provinsi-dki-jakarta-2017.html>>, accessed on 3 october 2020

92 BPS, 'statistik kesejahteraan rakyat 2015', <<https://www.bps.go.id/publication/2015/12/22/1ad0c6e3d452a3878e5ecb5e/statistik-kesejahteraan-rakyat-2015.html>> accessed on 3 october 2020.

93 Samba Mukoko, 'Low-Income Housing in Growing Urban Economies: A Case-Study of Surabaya, Indonesia' (1996) United Nations Centre for Regional Development (UNCRD) 66.

94 Paul Jones, 'Formalizing the Informal: Understanding the Position of Informal Settlements and Slums in Sustainable Urbanization Policies and Strategies in Bandung, Indonesia' (2017) 9 *Sustainability* 1436.

95 Libby Porter, 'Informality, the Commons and the Paradoxes for Planning: Concepts and Debates for Informality and Planning' (2011) 12 *Planning Theory and Practice* 115; Patrick Guinness, 'Land and Housing Security for the Urban Poor' in John F McCarthy and Kathryn Robinson (eds), *Land and Development in Indonesia: Searching for the People's Sovereignty* (ISEAS–Yusof Ishak Institute 2016).

96 Devisari Tunas and Andrea Peresthu, 'The Self-Help Housing in Indonesia: The Only Option for the Poor?' (2010) 34 *Habitat International* <[dx.doi.org/10.1016/j.habitatint.2009.11.007](https://doi.org/10.1016/j.habitatint.2009.11.007)> accessed on 3 October 2020; D Tunas and LT Darmoyono, 'Self-help Housing in Indonesia' in J Bredenoord, P van Lindert and P Smets (eds), *Affordable Housing in the Urban Global South: Seeking Sustainable Solutions* (Routledge 2014).

sector is usually offered for an affordable price.⁹⁷ The informal housing sector is usually most prominent in *kampungs* (urban villages), where one can buy or rent a house from individuals, either directly or through a mediator.

Rental houses can be found in the informal housing sector. The legal arrangement for such housing is completely private. The owner is, for example, required to improve the habitability of the rental house. Previous studies show many owners are reluctant to do this, particularly if they let their house(s) purely for secondary or additional income.⁹⁸ Although several local governments in cities such as Jakarta and Yogyakarta have tried to regulate these type of houses, in terms of introducing a registration procedure for taxes, owners still were not registering their rental properties. In this regard, very few arrangements are made by (local) governments to protect tenants' interests. Despite this weakness, in urban areas private rental houses are still a favourite choice for prospective tenants from outside the city, as they are more affordable and freely available.

Rental homes can also be found in the formal housing sector. Housing in the formal sector is usually built by developers or governments and connected with infrastructure and essential public services. Formal housing sector homes are usually expensive and unaffordable for particular groups,⁹⁹ but are often securely tenured.¹⁰⁰ Most of the time, Indonesian private developers build houses for middle and high-income groups. As a result, the number of homes in the formal housing sector in Indonesia continues to increase, particularly in urban areas.¹⁰¹ In the formal rented housing sector, homes are mostly built by government institutions through a *Rusunawa*

97 Abidin Kusno, 'Power and Time Turning: The Capital, the State and the Kampung in Jakarta' (2015) 19 *International Journal of Urban Sciences* 53; Ananya Roy, 'Urban Informality' (2005) 71 *Journal of the American Planning Association* 147.

98 Diah Wasis Wulandari and Suguru Mori, 'Characteristics of the Spatial Structure of Kots Private Rental Housing: A Case Study of the Urban Settlement of Jakarta, Indonesia' (2014) 13 *Journal of Asian Architecture and Building Engineering* 309; Diah Wasis Wulandari, 'Improvement of Living Environment and Management of Kost Private Rental Housing in Urban Settlement of Indonesia' (Hokkaido University 2015); Diah Wasis Wulandari and Suguru Mori, 'Nature and Operation of Kost Private Rental Housing in Urban Settlement Development of Jakarta, Indonesia' (2015) 9 *Journal of Civil Engineering and Architecture* 1362; see also Hoffman *et al* (n 90).

99 Kusno (n 97).

100 Jones (n 94).

101 Paavo Monkkonen, 'Urban Land-Use Regulations and Housing Markets in Developing Countries: Evidence from Indonesia on the Importance of Enforcement' (2013) 34 *Land Use Policy* <dx.doi.org/10.1016/j.landusepol.2013.03.015> accessed 3 October 2020.

programme. *Rusunawa* is the abbreviation of *Rumah Susun Sederhana Sewa*, which can be translated as ‘Rented Modest Storey Housing’. The government first introduced this programme in the 1980s, in order to tackle the contemporary housing affordability problem.¹⁰² It still aims to provide housing for low-income groups.¹⁰³ *Rusunawas* can be built by national and local governments; however, they are always managed by local governments. Currently, the *Rusunawa* programme exists in most Indonesian cities, and the number is increasing due to high demand. Jakarta, for example, succeeded in providing 6,978 housing units (242 tower blocks) in 2016.¹⁰⁴

3.3 *Justifiable evictions and the Indonesian legal framework*

As we have provided some insight into the Indonesian housing context, we will now focus on the occurrence of evictions due to rent arrears in Indonesia, and the protection provided by Indonesian law against this type of justifiable eviction.

Based on the data from the Indonesian National Statistical Agency, it can be assumed the number of people living in rented (public) housing will continue to increase. As stated above, this is partly caused by government policies that oblige informal settlers living on river banks, or near railway tracks, to move to rental public housing provided by the local governments. This occurs particularly in big cities, such as Jakarta and Surabaya. Yet, new public tenants often experience many differences between their new formal living environment and their former informal housing situation. Some of these differences concern the higher costs of their accommodation, water and electricity systems, and transportation. Research also shows that some new public tenants have lost their jobs due to moving to the new rental premise.¹⁰⁵

Research conducted by the Jakarta Legal Aid Institute shows around 43 per cent of people living in rented public housing face difficulties in paying their rent.¹⁰⁶ Other research showed that, in 2013, the percentage of inhabitants able to pay the Marunda Public Housing rental fee was 71 per cent; the remainder of the public tenants (39 per cent) experienced difficulties, as the rental fee was

102 For example, with the enactment of Law No 16/1985 and Government Regulation No 4/1988 on Tower Blocks.

103 Law No 1/2011 (n 80) art 1 [10].

104 Data received from Dinas Perumahan dan Pembangunan Gedung Pemerintah Daerah, Jakarta (2016).

105 Januardy *et al* 2016 (n 19).

106 *ibid.*

30 per cent more than their average salaries.¹⁰⁷ Hence, newly housed public tenants are facing a severe threat of eviction due to rent arrears.¹⁰⁸

Given this development and the expected increase in the percentage of people relying on rental housing in the near future, it is essential for Indonesia to establish a legal framework to protect the poor from eviction and homelessness. This framework can mainly be found in the Indonesian Civil Code (*Kitab Undang Hukum Perdata*) - more particularly, in Book III which regulates agreements, including rental agreements. The Government Regulation No 44/1994 on Housing Tenancy also contains relevant provisions. Both the Civil Code and Government Regulation No 44/1994 regulate written agreements which can be proven by submitting other forms of evidence.¹⁰⁹

In the case of the violation of a written rental agreement, both tenants and landlords can rely on the Civil Code law to initiate proceedings with the General Court.¹¹⁰ In a case of persistent non-payment, landlords will usually first send a notice to tenants. There is no requirement for an exact number of notices that should be sent before landlords may start court proceedings. General practice shows usually notice is given to tenants three times, before landlords take the case to a court. If tenants do not respond to the notices, the landlords will lodge complaints with a General Court in their particular district. This claim will be based on a breach of the obligations by the tenants, as described in Articles 1243 and 1267 of the Indonesian Civil Code. This procedure can be used by a landlord to force tenants to comply with their obligations, to receive compensation for any loss experienced, or to force the tenants to vacate the rental home.¹¹¹ Moreover, the Government Regulation on Housing Tenancy (No 44/1994) states that, in a case of tenants who persist in staying, landlords can request assistance from the police and public order officials in

107 Muhammad Randy, 'Identifikasi Kemampuan dan Kemauan Membayar Sewa Masyarakat Berpenghasilan Rendah Terhadap Rumah Susun Sederhana Sewa dan Faktor-Faktor Yang Mempengaruhinya' (2013) 24 Jurnal Perencanaan Wilayah dan Kota <journals.itb.ac.id/index.php/jpwk/article/viewFile/4097/2187> accessed on 3 October 2020.

108 The Jakarta government has explained in 2016 it suffered a financial loss of around 22 billion rupiah, due to the rent arrears of people living in rented public housing. See 'Tunggakan Sewa Rusun DKI Rp 22 Miliar' Media Indonesia (Jakarta, 21 October 2016) <mediaindonesia.com/news/read/73368/tunggakan-sewa-rusun-dki-rp22-miliar/2016-10-21> accessed 3 October 2020.

109 See Indonesian Civil Code arts 1320, 1338, and arts 1548, 1549–1580 (Chapter VII of the Civil Code on the Rental Agreement). The online version of the Civil Code in three languages Dutch, Indonesian and English, available online at <oia.coj.go.th/th/file/get/file/201903264363b12ae39947f045a4fb5fad740dc8090532.pdf> accessed 3 October 2020.

110 *ibid* arts 1236, 1239, 1243, 1244.

111 Art 11 of Government Regulation No 44/1994 on Housing Tenancy.

evicting tenants from their homes.¹¹² If tenants do not agree with an eviction, they can report it to the police on the grounds of maltreatment (Article 351 of the Indonesian Penal Code) and lodge a complaint against their landlords on the basis of an unlawful act (Article 1365 of the Civil Code). However, such legal proceedings often take a long time.

However, this legal framework may not be well implemented, and it only serves as the law in the books. If we also take a look at the law in action, it may become more complicated - for a number of reasons. First, the lack of research and available (quantitative) data on justifiable evictions makes it difficult to estimate how many people are evicted on a yearly basis, and if and how the legal protection described above functions in practice. Although the Indonesian judiciary publishes some case law online, not all court decisions are published.¹¹³ In addition, it is difficult to find justifiable eviction case law in the Indonesian online case law database. Second, when it comes to the (informal) Indonesian rental sector, in most instances there is no written agreement between the landlord and tenant. As a result, many Indonesian tenants have very little protection in law. Third, even when a written tenancy agreement exists and legal protection is technically provided, we find that, since court procedures are time-consuming and expensive, parties have used other (more informal) mechanisms in a significant number of cases, resulting in 'informal evictions'.¹¹⁴ Moreover, a large percentage of tenants will most likely accept their landlord's decision, because they do not understand their rights and are in a comparatively weaker bargaining position.

However, with regard to public housing, tenancy agreements are usually written, and consequently the protection provided by the legal framework is applicable. The governments will usually use a default written agreement which applies to all prospective tenants.¹¹⁵ As stated above, local governments use public housing to provide shelter for people affected by development programmes. However, this resettlement often results in a sudden negative change in the evictees' lives - for example, the loss of jobs and income. Consequently, these new public tenants are often not able to pay their rental fees. The Jakarta

¹¹² *ibid* art 10(2).

¹¹³ The domestic court's decision can be found on the website of the Indonesian Supreme Court (*Mahkamah Agung*) <www.mahkamahagung.go.id/id> accessed 3 October 2020.

¹¹⁴ For example, tenants preferred to look for a soft loan to pay their rent arrears to their landlord, so they can extend their stay. Another mechanism involves the head of the neighbourhood mediating the conflict between tenants and landlords.

¹¹⁵ The standard agreement applicable to all prospective tenants is available in Governor Regulation of DKI Jakarta No 111/2014 (n 21), format 4.

Legal Aid Institute discovered almost half of public tenants have experienced rent arrears, for periods ranging from two to ten months.¹¹⁶

The public tenancy agreement stipulates that, if tenants do not pay the rent for two months, they have to leave the housing and pay a fine.¹¹⁷ Between 2015 and 2016 rent arrears caused a loss of around 22 billion rupiah for the Jakarta government.¹¹⁸ Yet, the local government seems to let the tenants who are in arrears stay in their accommodation. As most of the tenants were victims of eviction due to its development programmes, the Jakarta local government seemed to be more lenient towards them. The Jakarta authority sent three notices to warn tenants to pay their rent. If the tenants were willing to respond, the government offered to assist them with their rent arrears payments via instalments.¹¹⁹ Moreover, the local government also established a charity-based institution named *Badan Amal Zakat Infaq dan Sadaqah (BAZIS) DKI Jakarta*. This organisation helped tenants with their rental payments, particularly tenants who were unemployed;¹²⁰ however, although this paid the tenants' rent, they still had to pay a fine for being in rent arrears. This intervention, notwithstanding its ad hoc nature, was successful in preventing hundreds of households from becoming homeless.

4 Justifiable Evictions under Dutch Law

The second jurisdiction under review is the Netherlands. In the first section, we will give some background information on the housing (law) context in the Netherlands. We analyse how the right to housing is recognised within the Dutch legal system, and key characteristics of the housing sectors are described. Further, we assess the Dutch legal framework's regulation of justifiable evictions, such as evictions because of rent arrears. Lastly, we present and analyse data concerning the number of justifiable evictions in the Dutch rental sector.

¹¹⁶ Januardy *et al* 2016 (n 19).

¹¹⁷ See the public housing agreement in Jakarta (n 21), only available in Indonesian.

¹¹⁸ See Januardy *et al* 2016 (n 19); see also 'Ribuan Penghuni Rusun Menunggak Sewa' *Kompas* (Jakarta, 26 October 2016) <megapolitan.kompas.com/read/2016/10/26/16190041/ribuan-penghuni.rusun.menunggak.sewa> accessed 3 October 2020.

¹¹⁹ See 'Tunggak Bayar Sewa Ribuan Penghuni Rusun Terancam Diusir' *Pos Kota News* (Jakarta, 27 October 2016) <porosjakarta.com/7439/tunggak-bayar-sewa-ribuan-penghuni-rusun-terancam-diusir> accessed 3 October 2020.

¹²⁰ See Media Indonesia (n 108).

4.1 *The right to housing in the Netherlands*

Dutch legislation does not contain a fundamental right to housing, as such. However, the Dutch Constitution lays down the obligations for authorities to provide sufficient living accommodation, and holds that the State is responsible for adequate housing and its distribution.¹²¹ Furthermore, the Constitution gives inhabitants the right to respect for his/her private life¹²² and the right to the inviolability of the home.¹²³ These two rights can only be restricted legitimately if an Act of Parliament provides a legal basis for such a limitation. Under Dutch law, it is not a matter for debate whether or not an eviction can be seen as a limitation of these rights. Consequently, various Acts of Parliament (such as the Civil Code) contain detailed provisions stipulating the conditions under which authorities may restrict these rights by, for example, entering someone's home without permission or issuing an eviction order.¹²⁴

In addition, the Netherlands ratified several international treaties which contain elements of the right to housing, such as the ICESCR, the European Social Charter, and the European Convention on Human Rights (ECHR). Article 8 of the ECHR has the most impact on eviction practices in the Netherlands. Citing the case law of the European Court of Human Rights (European Court), the Dutch Supreme Court has held eviction is a severe interference with the right to the inviolability of the home. According to the Supreme Court, everyone at risk of this interference should, in principle, be able to have the proportionality of the eviction determined by an independent court, before the eviction is carried out.¹²⁵

4.2 *The tenure system and housing sectors in the Netherlands*

In 2019, the housing stock in the Netherlands consisted of over 7.8 million premises.¹²⁶ Over half (57 per cent) of these premises were owner-occupied. The remainder of the housing stock is rented housing. The Dutch rental housing sector can be characterised as a unitary rental system, which involves direct competition between two integrated sectors:¹²⁷ commercial rented housing

121 Dutch Constitution 1983 Art 22.

122 *ibid* art 10.

123 *ibid* art 12.

124 See for example art 7:231 of the Civil Code 1992 and the General Act on Entry on Dwellings 1994.

125 See Dutch Supreme Court, *Staat v X and others* [28-10-2011] ECLI:NL:HR:2011:BQ9880.

126 See CBS, 'Voorraad woningen; eigendom, type verhuurder, bewoning, regio' <statline.cbs.nl/Statweb/publication/?VW=T&DM=SLNL&PA=82900NED&D1=a&D2=a&D3=0,6-18&D4=a&HD=170406-1359&HDR=T&STB=G1,G2,G3> accessed 3 October 2020.

127 J Kemeny, *From Public Housing to the Social Market, Rental Policy Strategies in Comparative Perspective* (Routledge 1995); see also Jim Kemeny, Jan Kersloot and Philippe Thalmann,

and social (or non-profit) rented housing. Non-profit dwellings are operated by housing associations.¹²⁸ In 2019, housing associations owned approximately 29 per cent of the total housing stock. The Housing Act 2015 obliges the associations to rent nearly all of their premises to people with a relatively low annual income (approximately €38.035, in 2019). Landlords in the commercial sector are mostly private organisations - for example, private companies and individuals – and in 2019 they owned almost 13 per cent of all premises.

The government plays an important role in the rented sector. The national government, for example, decides the housing allowance applicable nationally. In addition, it adopts several policies directly and indirectly affecting rented housing, such as the regulation and supervision of housing associations, rent control, and urban renewal programmes.

4.3 *Justifiable evictions and the Dutch legal framework*

Under Dutch law, rent arrears can result in the termination of a tenancy agreement and the tenant's eviction, in both the social and commercial rental sectors. Not paying the rent can be characterised as a violation of the tenant's statutory obligation to behave as a good/prudent tenant, as well as a breach of the tenancy agreement.¹²⁹ The basic rule is strict: a breach of the tenancy agreement will give the landlord sufficient reason to terminate the tenancy agreement.¹³⁰ Nevertheless, under Dutch law, the landlord is not entitled to terminate the tenancy agreement unilaterally and proceed with a self-help eviction. If the tenant does not agree with the termination of the tenancy agreement, the landlord is required to request the court to terminate the agreement and issue an eviction order.¹³¹ In addition, the tenant is entitled to put forward a proportionality defence during court proceedings. Under European law (Article 8 of the ECHR), as well as Dutch national law (Article 6:265 of the Civil Code), the court is legally obliged to take a tenant's defence into account, and it may dismiss the landlord's claim because of proportionality issues. If the court decides to allow the landlord's claim and issue an eviction order, a bailiff

'Non-Profit Housing Influencing, Leading and Dominating the Unitary Rental Market: Three Case Studies' (2005) 20 Housing Studies 855.

128 Marja Elsinga, Marietta Haffner and Harry Van Der Heijden, 'Threats to the Dutch Unitary Rental Market' (2008) 8 European Journal of Housing Policy 21.

129 The Dutch Civil Code, art 7:213 <www.dutchcivillaw.com/civilcodegeneral.htm> accessed 3 October 2020.

130 *ibid*, art 6:265.

131 Article 7:231 of the Dutch Civil Code (n 131). See also Michel Vols, M Kiehl & J Sidoli del Ceno, 'Human Rights and Protection against Eviction in Anti-social Behaviour Cases in the Netherlands and Germany' (2015) 2 EJCL 156.

FIGURE 1 Number of (executed) eviction orders in the Netherlands

will notify the tenant of an eviction date. On average, the eviction will usually take place two to three weeks after notice is given.¹³²

This legal framework should be characterised as the law in the books. Compared to Indonesia, more research and data are available on the law in action with regard to justifiable evictions in the Netherlands. Although little is known about justifiable evictions in the commercial rental sector, data suggests that justifiable evictions take place regularly in the social rental sector.

Every year, the housing associations publish a report containing the number of judgments that entitled them to evict a tenant.¹³³ Figure 1 below shows the number of eviction orders issued has declined considerably in recent years. In 2019, courts ordered nearly 48 per cent fewer eviction orders (12,000) than in 2003 (23,265).¹³⁴ However, the table also shows the number of eviction orders peaked during the years in which the Netherlands suffered an economic crisis, especially from 2012 to 2015. In recent years, roughly 80 to 85 per cent of all the eviction judgments in the social rental sector concerned tenants who did not pay their rent.

¹³² Art 14, Bailiffs Act 2001.

¹³³ See Michel Vols, 'European Law and Private Evictions: Property, Proportionality and Vulnerable People (2019) 29 *European Review of Private Law* 719.

¹³⁴ Michel Vols, 'Evictions in the Netherlands' in Padraic Kenna, Sergio Nassarre-Aznar, Peter Sparkes and Christoph Schmid (eds), *Loss of Homes and Evictions Across Europe* (Edgar Elgar 2018) 214–238; Aedes, *Corporatiemonitor 2018* (Den Haag Aedes 2019).

The data shows an eviction order does not necessarily mean the tenants will, in the end, lose their home. An eviction order can be executed. This refers to a situation in which the court has entitled a housing association to evict a tenant, but it was necessary to call in the bailiff to execute the order after the eviction period expired. The vast majority of eviction judgments are not executed by the housing associations: Figure 1 above shows roughly 25 per cent of the eviction orders are executed. One important reason for this is the housing associations feel morally and legally obliged to provide poor people with affordable housing. It is their main policy to prevent eviction at almost all costs, and they are involved in all sorts of anti-eviction “second chance” programmes which support tenants with financial and other problems. Housing associations use the eviction orders as a stick to push tenants into accepting help with their financial problems. Only if a tenant decides not to cooperate with the special programme to prevent financial problems, or fails to comply with their obligations over and over again, will the housing association execute eviction judgments.¹³⁵

Nonetheless, every year thousands of tenants in the social rental sector undergo an actual eviction because of rent arrears. After the eviction judgment is executed, the evictees are not allowed to live in the rental property anymore, and need to find alternative accommodation themselves. Under Dutch law, housing associations, courts and local authorities are not statutorily obliged to provide every specific evictee with alternative accommodation. Still, the Netherlands has a reasonably well functioning system of shelters that will provide homeless people with temporary accommodation.

In a number of the larger Dutch municipalities, the local authorities have established special organisations which help to rehouse evictees who have encountered financial (and several other) problems. The organisations offer alternative accommodation to evictees, under the condition they sign a tailor-made tenancy agreement with specific conditions concerning the level of help tenants should accept.¹³⁶

However, without the help of an organisation or shelter, it is not easy for evictees to apply for a new rental property in the social rental sector. Before granting applicants a rental property, many housing associations will screen applicants against a blacklist, or request a signed document concerning the tenant's behaviour from their former landlord. Presumably, this reference will not be provided if the tenant was previously evicted because of rent arrears. As a result, evictees are banned from applying for social rental housing for a couple of years. There is no data concerning how many evictees have been

¹³⁵ C Akkermans and M Räkers, *Voorkomen huisuitzettingen* (Eropaf 2013) 46.

¹³⁶ *ibid* 55.

banned or blacklisted. Case law shows that applicants do try to fight this ban, but also that these legal fights are not satisfactory. Courts hold that housing associations are not obliged to rehouse people with a track record of arrears. Yet, courts ruled that if a ban lasts too long, this will be considered disproportionate. In the end, every person deserves a second chance.¹³⁷

5 Comparative Analysis: Do Both Jurisdictions Comply with the International Obligations?

In this section, we will analyse whether the two jurisdictions under review comply with the requirements stemming from the right to housing. These requirements were described in detail in section 2 above. To answer this question, we will identify, describe, and contrast similarities and differences between the ways in which Indonesia and the Netherlands provide protection against justifiable evictions in the rental sector. Yet, we do not aim to summarise all the findings presented throughout the article; instead, we will focus on exploring and analysing the main differences and similarities relevant to answering the research question.

Our analysis leads to four main findings. The first is both Indonesia and the Netherlands have recognised the international right to housing as laid down in the ICESCR; consequently, both countries are bound to the obligations stemming from that right. As a result, the international requirements concerning protection against evictions are applicable in both countries. Furthermore, both countries have codified a right to housing in their constitution. Whereas article 28H(1) of the Indonesian Constitution recognises the right to a place to live (*hak untuk bertempat tinggal*), Articles 10 and 12 of the Dutch Constitution protect residents against violations against their right to housing in the Netherlands. Additionally, other national legislation, such as the Indonesian Law No 1/2011 on Housing and Settlement and the Dutch Civil Code, offer additional protection of the right to housing. Consequently, from a 'law in the books' perspective, both the Indonesian and Dutch populations seem to enjoy robust protection of their right to housing. Yet, this finding should be nuanced if one analyses the matter from an empirical 'law in action' perspective. Due to its large and growing population, Indonesia is still not able to fulfil the right to housing for its inhabitants. Although several measures and policies have been adopted, the number of people living in slum areas is growing, and the housing backlog is also increasing.

¹³⁷ See *Nijestee v X* (18/4/2013) ECLI:NL:RBNNE:2013:BZ7896 (District Court Noord-Nederland).

This law in action perspective brings us to the second main finding. Our analysis shows justifiable evictions due to rent arrears take place regularly in both jurisdictions. Yet, it is important to acknowledge the housing contexts in which these evictions take place are different. The Indonesian housing sector can be characterised as being mainly informal, predominantly relying on private initiatives. The Dutch housing sector is heavily regulated by the state, and contains a large number of semi-public housing units (nearly 30 per cent of the housing stock). A more recent development in Indonesia is that the rental housing sector is on the rise; growing especially quickly in large cities, such as Jakarta. Statistical data presented above shows over 30 per cent of the housing in Jakarta is now (informal) rental accommodation. Most of these urban tenants live in private rental accommodation, but the number of public housing units built under the *Rusunawa* programme is increasing.

Our research shows in both Indonesia and the Netherlands the government does not collect data on the number of evictions taking place in the rental sector. As a result, it is impossible to determine how many people are evicted due to rent arrears. This lack of data is in itself problematic, given the requirements stemming from the international right to housing: the CESCR requires Member States to monitor the number of evictions and to report that number in the periodic report submitted to the CESCR.¹³⁸

Nonetheless, we have found some data on the number of (potential) evictions in the public housing sector in both countries. In the Netherlands, district courts issue between 10,000 and 20,000 eviction orders concerning semi-public housing yearly. Still, the housing associations execute only a relatively small number of these orders (around 25 per cent), because they feel morally and legally obliged to prevent eviction and making their tenants homeless. With regard to Indonesia, no data about evictions is available. However, research shows that a large percentage of the public tenants in Jakarta (approximately 40 per cent) encounter difficulties in paying their rent and face a severe threat of eviction due to arrears. Many of these tenants have difficulties in paying their rent, because the cost of living in public housing accommodation is higher than in their previous informal accommodation.

The third main finding is, in both countries under review, the law offers protection against justifiable evictions. From a law in the books perspective, the protection provided by the Indonesian and Dutch Civil Codes shows a major resemblance. In both jurisdictions under review, in the case of rent arrears

¹³⁸ General Comment 7 (n 6) [18].

landlords need to serve notice and must go to court in order to oblige the tenants to vacate the property.

As a result, one could conclude both Indonesia and the Netherlands comply with a great number of requirements stemming from the international right to housing (as described in section 2). Both jurisdictions provide (procedural) protection of the right to housing or the right to sufficient living accommodation in constitutional, administrative and private law. Both countries have formally regulated the process concerning (the enforcement) of evictions. Moreover, both jurisdictions under review have provided public housing (with subsidy) for the low income groups.

However, if we take into account the data on the law in action presented above, this conclusion should be nuanced, for a number of reasons. The first reason is that neither country makes data on how many people are evicted, on a yearly basis, publicly available. Moreover, very little case law on justifiable evictions is available in the Indonesian online case law database. In the Netherlands the judiciary publishes a larger, but still relatively small, number of judgments online. As a result, it is very hard to judge how many evictees seek judicial protection, and if and how national courts are applying the legal framework in practice. Again, this lack of available information is in itself at odds with the requirements stemming from the ICESCR.

The second reason for a nuanced conclusion based on the law in the books analysis, concerns the crucial role of informality. In the vast majority of cases, Indonesian tenants will rent their home in the informal housing sector and will not have a written rental agreement. As a result, they will enjoy very little legal protection against eviction. Moreover, many evictions in Indonesia can be characterised as ‘informal evictions’: in these cases, the eviction will take place outside the official court procedure.¹³⁹ With regard to the Netherlands, we expect that such informal evictions also occur, especially in the private rental sector.¹⁴⁰ Due to the lack of data, however, it is impossible to estimate how many of these informal evictions take place every year.

Our last (and most conclusive) finding is that neither Indonesia nor the Netherlands seem to comply with requirements stemming from Article 11 ICESCR, concerning state obligations with regard to alternative accommodation. As stated above, in the *Ben Djazia & Belili* decision the CESCR held states are obliged ‘to take reasonable measures to provide alternative housing to persons who are left homeless as a result of eviction, irrespective of whether the eviction

¹³⁹ M Desmond, ‘Eviction and the Reproduction of Urban Poverty’ [2012] AJS 88.

¹⁴⁰ See Vols 2019 (n 133).

is initiated by its authorities or by an individual such as the lessor'.¹⁴¹ In both Indonesia and the Netherlands, we found state authorities are not statutorily obliged to offer alternative accommodation in cases of eviction. Moreover, during eviction proceedings, courts in both countries are not obliged to check whether alternative accommodation is available. As a result, we hold that in both countries there is a considerable chance evictions will render individuals homeless. However, our research also shows, in the two jurisdictions under review, various initiatives have been taken to prevent tenants who are unable to pay their rent becoming homeless. The Netherlands protects tenants from being evicted by providing adequate shelter. Indonesia showed its intention to do the same by adopting an ad hoc policy to help tenants pay their rent. This measure seems to be effective, yet the need for more structured preventative and protective frameworks is pivotal.

6 Conclusion

In this article, we have explored the scope and limits of the obligations stemming from the international right to housing as laid down in Article 11 ICESCR, in the context of evictions. In doing so, we suggested conceptualising the international right to housing as rights to housing. These rights to housing concern, *inter alia*, the protection of residents against the loss of their home and becoming an outsider to the housing sector again. Our analysis shows the meaning of the concept of 'forced eviction' is rather ambiguous in international human rights law discourse. Nonetheless, we hold international law requires states to offer robust legal protection against what we have coined, 'justifiable evictions'. Furthermore, the article presents new doctrinal and empirical data on if and how an Asian jurisdiction (i.e. Indonesia) and a European jurisdiction (i.e. the Netherlands) both comply with the requirements stemming from Article 11 ICESCR, the CESCR GCs, and the *Ben Djazia & Bellili* decision of the CESCR. Although, from a law in the books perspective, both jurisdictions seem to comply with many of these requirements, the empirical data on how the legal frameworks are applied in practice indicates we should be more careful about drawing that conclusion.

One of the more significant findings to emerge from this study is there is a grey area regarding the protection of people evicted when they cannot pay their rent. Based on the CESCR's interpretation of the states' obligations, states should protect victims of rent arrears evictions in the same way as those who were evicted because of (for example) development projects. Yet, it remains

¹⁴¹ *Djazia and Bellili v Spain* (n 54) [15.2].

unclear how far this protection goes. The international obligations require states to offer evictees remedies and access to legal mechanisms. It is not clear whether the right to housing also obliges states to provide all rent arrears evictees with temporary shelter, and to rehouse them in affordable housing.

We identify a number of possibilities for dealing with this issue, by applying either a maximum protection or a minimum protection interpretation. A maximum interpretation refers to the absolute obligation of states to provide alternative accommodation in every case of eviction due to arrears, irrespective of the reason(s) for the arrears. However, this maximum interpretation may have negative consequences. For example, it might give tenants an incentive not to pay their rent, because the government will provide them with affordable housing anyway. Alternatively, a minimum protection interpretation obliges the government only to provide legal mechanisms for the affected individuals to challenge the eviction order and ensure landlords (either private parties or governments) are stopped if the eviction is not justifiable. This interpretation follows mainstream thinking that states are not responsible for rehousing all individuals who fail to pay their rent. However, states may feel obliged to prevent homelessness in their territory to a certain extent, as homelessness may also lead to other problems in areas such public health, safety, and maintaining public order.¹⁴²

If we follow a maximum protection interpretation of the international requirements, our analysis of Dutch and Indonesian law and housing policies shows neither state complies with the obligation to rehouse victims. However, the Netherlands provides evictees with temporary shelter and makes several interventions to prevent them from becoming homeless. Indonesia provides consultation and aid to help rent arrears evictees to pay within a specific period; however, no shelter is provided if eviction does occur. In countries with clear and effective legal mechanisms, such as the Netherlands, evictees may be in a better position to gain temporary shelter, whilst in countries with no clear mechanisms, like Indonesia, no right to shelter can be invoked.

Despite its exploratory and comparative nature, this study offers new insights into a different interpretation of the right to housing, mainly to expand protection for people evicted due to persistent rent arrears, which is predicted to grow in importance in the future, particularly in developing countries. Further studies need to be carried out to establish the exact boundaries of the international framework concerning legal protection for the victims of justifiable evictions in various regions of the world, including the Asia-Pacific region.

142 A Tollenaar, 'Homelessness, Constitution and Governance' in GJ Vonk and A Tollenaar (eds), *Homelessness and the Law: Constitution, Criminal Law and Human Rights* (Wolf Legal Publishers 2014) 25–36, 25.