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SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates 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; the Special Rapporteur on extreme poverty and human rights; and the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

REFERENCE: AL Housing (2000-9) Poverty (1998-11) Debt (2000-9)
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on extreme poverty and human rights; and Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights pursuant to Human Rights Council resolutions 15/8, 17/13, and 16/14.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **the current and potential impact of the economic crisis and the austerity measures deployed to address it, in particular the effects the enjoyment of the human rights to adequate housing and to an adequate standard of living, especially for people living in poverty in Spain.**

According to the information received:

Spain has undertaken a combination of legal reforms, budget enactments and policy interventions between 2010 and 2013 designed to reduce public expenditures by historic margins at the national, regional and municipal levels. In May 2010, the Government initiated measures to reduce public expenditure and the public deficit with the approval of Royal Decree-Law 8/2010¹, and in April 2011 with the 2011-2014 Stability Program.²

¹ Real Decreto-ley 8/2010, de 20 de mayo, por el que se adoptan medidas extraordinarias para la reducción del déficit público. Boletín Oficial del Estado nº 126 de 24 de mayo de 2010.

² Gobierno de España. Programa de Estabilidad 2011-2014. Disponible en:
http://ec.europa.eu/europe2020/pdf/nrp/sp_spain_es.pdf

Driven by the governing priority of deficit reduction, reports received claim that the package of austerity measures enacted by the Government undercuts several economic and social rights protections. The information received alleges that these austerity measures have discriminatory effects and undermine minimum essential levels of socio-economic rights in certain circumstances. These austere policy responses to the economic crisis are also alleged to be equivalent to retrogressive measures, prohibited under the International Covenant on Economic, Social and Cultural Rights (ICESCR) to which Spain is a party since 1977.

Context: Rising poverty and inequality

According to the information received, one of the main effects of the Government's austerity policies has been the significant increase in people who are at risk of poverty and exclusion. According to European Commission statistics, the number of Spaniards at risk of poverty and exclusion has increased by over two million since 2008, hitting 27 percent in 2011.³ National statistics show that one in every five Spaniards is at risk of poverty.⁴ In some 1,821,000 homes across Spain all economically active members are unemployed.⁵ In this sense, poverty in Spain since the crisis began has become more extensive, more intensive and become more chronic, reports suggest. Simultaneously, Spain now occupies the top position for income inequality in the EU-27, with the top 20 percent of the Spanish population receiving seven times the income of the bottom 20 per cent.⁶

According to concerned sources, the aforementioned measures could severely undermine the human rights of people living in poverty in Spain, particularly with regard to their rights to health, housing and an adequate standard of living (e.g. by forcing some people deeper into poverty through cuts in or removal of benefits). Information received also indicates that none of the austerity measures were accompanied by a full human rights impact assessment, nor a detailed analysis of the compatibility of the budget cuts with Spain's international human rights obligations.

Housing situation as a result of austerity measures

As far back as in 2006, the then Special Rapporteur on adequate housing warned that many vulnerable groups in Spain were spending more than 40 per cent of their income on mortgages or were defaulting on their payments, and that their

³ Eurostat database, Population and Social conditions, Living Conditions and Welfare. Available at: http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database

⁴ INE, Nivel, Calidad y Condiciones de Vida 2012. Ver: <http://www.ine.es/jaxi/menu.do?type=pcaxis&path=/t25/p453&file=inebase&N=&L=0>

⁵ INE, Survey of the Economically Active Population: Second Trimester 2013. See: <http://www.ine.es/daco/daco42/daco4211/epa0213.pdf>

⁶ Eurostat, Population and Social Conditions, Living Conditions and Welfare, Distribution of Income. Available at: http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database

right to adequate housing was thereby being threatened.⁷ Since then, the right to adequate housing has allegedly been dramatically undermined by the government's austerity program, with those living in poverty experiencing particularly severe impacts, despite the fact that there are many physically available empty dwellings in Spain.

Furthermore, the housing cost overburden rate, defined as percentage of the population living in households where the total housing costs represent more than 40% of disposable income, has reportedly more than doubled since 2006.⁸ According to European Commission statistics, among people living in poverty this figure grew from 14 per cent in 2005 to 41.7 per cent in 2011, a rise of almost 300 per cent.⁹

The absence of official data on the number of evictions affecting family homes and the absence of regulations to relocate the evicted families reportedly makes it difficult to assess the precise dimensions of this problem. An estimate based on partial data produced by the judicial branch estimates some 400,000 mortgage foreclosures in Spain between 2008 and 2012.¹⁰ In 2012, approximately 75 per cent of the 65,778 home foreclosure procedures initiated were reportedly the only home or residency of the family. Information received estimates that 83 per cent of those unable to pay their mortgages have no place to go in case of foreclosure and in 70 per cent the reason of insolvency was the loss of their jobs.

In a context in which the number of evictions handled by Spanish courts reportedly continues to rise, it is also alleged that government efforts to protect the right to adequate housing have been weak and incoherent. Royal Decree-Law No. 6/2012 of 9 March 2012 reportedly leaves decisions as to whether or not homes may be accepted in lieu of payment to the discretion of banks rather than subjecting these decisions to human rights considerations.

In March 2013 the European Court of Justice held that the Spanish rules governing mortgage enforcement proceedings were 'incompatible' with European norms on abusive practices in consumer contracts –specifically, with the Council Directive 93/13/EEC.¹¹ In its ruling, the Court considered that the principle of effectiveness was contravened because, under such domestic rules, the court hearing declaratory proceedings (and assessing the fairness of challenged

⁷ UN Human Rights Council. —Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, Mission to Spain. 7 February 2008. UN Doc.: A/HRC/7/16/Add.2, paragraph. 44.

⁸ Eurostat, Living conditions and welfare, Income and Living Conditions, Living Conditions, Housing Cost Burden. Available at: http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database

⁹ Eurostat, Living conditions and welfare, Income and Living Conditions, Living Conditions, Housing Cost Burden. Available at: http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database

¹⁰ Consejo General del Poder Judicial, Boletín Información Estadística Nº 31 - Septiembre 2012 "Estimación del incremento de carga de los órganos judiciales atribuible a la crisis económica,"

¹¹ JUDGMENT OF THE COURT (First Chamber), 14 March 2013), Case C-415/11. Available at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=135024&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=643884>

contractual terms) had no legal power to grant interim measures aimed at suspending enforcement proceedings. According to the Court, since the final vesting of mortgaged property in a third party was always irreversible –even when the annulment of the enforcement proceedings had been declared– the consumer had no alternative but to merely expect a compensatory form of protection.

Among local organizations, the decision was reportedly regarded as supporting the view that eviction procedures in Spain have been abusive and opposed to fundamental rights, and that the State would be required to thoroughly revise the procedural laws that currently allow the enforcement of such abusive contractual terms. Following an intense mobilization campaign, a civil society movement reportedly collected 1.5 million signatures across the country to press the government to adopt measures to stop evictions resulting from mortgage foreclosure.

Law 1/2013 of May 14, 2013 attempted to amend the Royal Decree Law No. 6/2012¹² by introducing some protections against evictions due to foreclosures, but it reportedly fell short of expectations. Among other things, the law allegedly sets very restrictive requirements for families in situations of maximum vulnerability to avoid foreclosure for up to two years. Furthermore, information received claimed that the law does not facilitate access to social housing or rent nor does it provide an effective system of emergency housing. Another concern is reportedly that the parliamentary proceedings through which the law was created excluded the effective participation of those most affected by the policies in question. More importantly, a key demand of the social movement, the deliverance of the property in lieu of payment (*dación en pago*) as a form of extinction of mortgage debt, with retroactive character, was reportedly ignored in the law. According to information received, this alternative could have allowed the affected families to remain in their homes, while seeking to pay by means of entering social renting schemes.

On 23 May 2013, a new law (4/2013) was approved to provide greater flexibility and to promote the housing lease market, allegedly neglecting the interests of those most affected by the actual model. Indeed, the law states among its objectives to foster competitiveness, to improve legal protection for landlords, and to reinforce freedom of contract. The information received claims that this law weakens even further the legal situation of tenants by reducing the number of maximum years for lease contracts (from 5 to 3), eliminating the cost of living index as a reference for the increase of annual rent costs, allowing foreclosure proceedings to be initiated after tenants fail to make one month of payment and creating a register of debtors which further stigmatizes those affected by the crisis. Indeed, there have been reportedly previous legislative undertakings to facilitate evictions (*Ley 19/2009* and *Ley 37/2011*) without due legal safeguards and

¹² Law 1/2013, of May 14, on measures to reinforce protection of mortgagors, debt restructuring and social rent. Published in the Official State Gazette (BOE) on May 15, 2013.

without the persons affected being consulted in advance or being offered alternative accommodation or any compensation.

Although there is a lack of official information and data to assess the dimensions of the problem and those sectors of the population most affected by home foreclosures and evictions, independent surveys reportedly suggest that the housing crisis is having discriminatory impacts.

The social housing stock meanwhile remains under-supplied. According to the European Federation of Public, Cooperative & Social Housing, Spain's home-ownership sector represents 85 per cent of the total housing stock in Spain while the rental sector is only 11 per cent, the smallest in the region. Reportedly only 2% of housing stock in Spain is social rental housing. Equally troubling are reports that the Government, despite recommendations from the UN Committee on Economic Social and Cultural Rights, has still not adopted an official definition of "homeless person" to serve as a basis for compiling disaggregated data on the number of homeless persons in order that trends in homelessness can be assessed and appropriate measures developed to address them.

We have also received information that the depth and direction of the austerity measures was not necessary given alternative, revenue-raising measures that could have been implemented to offset the need for budget contractions. Evidence suggests that raising additional resources, while not placing even more fiscal burden on the poorest and without compromising the other important tenets of tax policy, is eminently possible. Spain is among the EU countries with the lowest levels of government revenue as a percentage of GDP, according to Eurostat, indicating that the Government could raise revenue overall without jeopardizing other economic priorities.

While we do not wish to prejudge the accuracy of these allegations, we would appreciate information from your Excellency's Government on the steps taken by the competent authorities to protect the human right to adequate housing of people living in Spain. These rights are enshrined, inter alia, in the Universal Declaration of Human Rights (hereafter UDHR), the ICESCR (ratified by your Government on 27 April 1977), and the Convention on the Rights of the Child (hereafter CRC, ratified by your Government on 6 December 1990).

We would particularly like to draw your attention to the following applicable human rights norms and standards.

Article 11.1 of the ICESCR holds that "the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." The CRC also enshrines the right to an adequate standard of living for all children (art. 27).

We would like to remind your Excellency's Government that Article 11.1 of the ICESCR protects the right to adequate housing. This is supplemented by General Comment 4 (1991), which *inter alia* urges states to ensure the affordability of housing, especially in times of economic contraction. The Committee also underlines that States parties must give due priority to those social groups living in unfavourable conditions and recommends that related policies and legislation should not be designed to benefit already advantaged social groups at the expense of others (para. 11). Further, General Comment 4 stresses that the concept of adequacy is fulfilled by, among other elements, the presence of "legal security of tenure", which requires that State parties, in genuine consultation with affected persons and groups, take immediate measures aimed at protecting all forms of tenure (including both public and private rental, and lease) against forced eviction, harassment and other threats (para 8.a).

Legal protection against forced evictions (by the State, its agents or third parties) is furthermore an express legal obligation of states, taking into account General Comment No. 7 on the right to adequate housing: forced evictions, as well as the recommendations of the Special Rapporteur on adequate housing, and the United Nations basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I).

According to the latter, protecting people from evictions, as part of their right to adequate housing, is a multistep task. It requires preventive measures, but also the protection of people both during and after such evictions. It demands immediate relief and relocation, as well as comprehensive remedies, including rehabilitation. Furthermore, the principles require States to avoid and/or eliminate underlying causes such as speculation in land and real estate. The operation and regulation of housing and tenancy markets should be reviewed, and States should intervene to ensure that market forces do not increase the vulnerability of low-income and other marginalized groups. Legal frameworks should be designed to ensure sufficient protection against physical or economic pressures on residents to leave or be deprived of adequate housing or land (para 30).

Article 2 of the ICESCR requires States to devote the maximum available resources to the progressive realization of the rights in the Covenant. In its General Comment No. 3, the Committee on Economic, Social and Cultural Rights stated that this is so even during times of severe resource constraints, whether caused by a process of adjustment, economic recession, or by other factors (as emphasised in the report of the Special Rapporteur on extreme poverty and human rights on a human rights-based approach to recovery from the global economic and financial crisis (A/HRC/17/34).

While 'progressive realisation' of economic, social and cultural rights is dependent on the specific circumstances of the State concerned, article 2(1) also imposes obligations that considerably limit the discretion of States with regard to the implementation of the Covenant and require immediate implementation. States Parties are obliged to take steps to achieve progressively the full realisation of the rights recognised in the Covenant. This obligation is immediately applicable and is not subject to limitation. Hence, it is not an obligation to take action in the future. States, regardless of their economic situation, must

take steps immediately to achieve the full realisation of the rights enshrined in the Covenant (General Comment No. 13 para 43).

There is a strong presumption that retrogressive measures that affect the level of enjoyment of economic, social and cultural rights are in violation of human rights standards (see for example General Comment no. 3 of the Committee on Economic, Social and Cultural Rights, para. 9 & 10 and General Comment 4, para. 11). As explained by the Committee, an example of a ‘deliberately retrogressive measure’ would be a general decline in living conditions, “directly attributable to policy and legislative decisions by States Parties, and in the absence of accompanying compensatory measures” (General Comment No. 4 para. 11). Examples of retrogressive measures might include the adoption of policy or legislation with a direct or collateral negative effect on the enjoyment of rights by individuals, or unjustified reductions in expenditures devoted to implementing public services that are critical for the realization of economic, social and cultural rights (See also A/HRC/17/34 para. 18).

We would like to draw the attention of your Excellency’s Government to the existence of the Guiding Principles on extreme poverty and human rights (contained in document A/HRC/21/39), adopted by the Human Rights Council by consensus at its 21st session (resolution 21/11). Your Excellency’s government may find paras. 51-55 (on the necessity that public policies accord due priority to persons living in poverty) and paras. 79-80 (on the right to housing), particularly relevant in this case. We would also like to highlight the letter written by the Chairperson of the Committee on Economic, Social and Cultural Rights to all States parties to the Covenant dated 16 May 2012, in relation to the protection of the Covenant rights in the context of the economic and financial crisis (CESCR/48th/SP/MAB/SW).

It is our responsibility under the mandates provided to us by the Human Rights Council to seek and to clarify all cases brought to my attention. Since we are expected to report on these cases to the Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Have complaints been lodged by individuals, households or communities affected by forced evictions?
3. Is the State collecting data on rates of homelessness in Spain and the number of evictions as a result of foreclosure proceedings? If so, please give details.
4. What measures have been taken to put an end to forced evictions? Has Spain adopted a legislative framework establishing the necessary requirements which must be met before an eviction is carried out, following the criteria set out in General Comment 7 of the Committee on Economic, Social and Cultural Rights, the recommendations of the Special Rapporteur on adequate housing and the principles and directives of the United Nations on evictions and displacement?

5. What measures have been taken to ensure that families subjected to processes of mortgage foreclosure do not see their right to adequate housing put at risk, for example compensation measures?

6. What measures has the State taken to promote effective enjoyment of the right to housing and to make housing accessible to the most vulnerable groups, for example by boosting the social housing stock?

7. Were the austerity measures preceded by human rights impact assessments, including assessments of the potential impact on the right to housing? If so, please give details.

8. Were alternative measures carefully considered with reference to rights provided for in the ICESCR in the context of the full use of maximum available resources? If so, please provide details of this examination.

9. Has a comprehensive national anti-poverty programme been decided upon or implemented, as strongly recommended by the CESCR, with specific measures and strategies to mitigate the adverse impacts of the current economic and financial crisis on disadvantaged and marginalized individuals and groups?

We would be most grateful to receive an answer within 60 days. We undertake to ensure that the response of your Excellency's Government to each of these questions is accurately reflected in the report we submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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