

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 and the Special Rapporteur in the field of cultural rights

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and Special Rapporteur in the field of cultural rights pursuant to Human Rights Council resolutions 25/17 and 28/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning concerning **alleged destruction of many historic buildings and neighbourhoods for the purpose of the Orange line metro train in Lahore, in violation of the right to housing and of cultural rights.**

According to the information received:

The Orange line metro train is planned to measure 27.1 km long, of which 1.2 km should be underground and the rest on an elevated viaduct at an average height of 41 feet, cutting through the heart of historic Lahore and a highly densely populated area. Destruction of historical buildings are announced to start on Monday 11 January 2016. The Orange line metro train has grave repercussions for cultural rights and the right to adequate housing as understood in international human rights law.

For example, a large number of registered protected heritage sites are directly threatened by the construction process, while some are endangered due to increased traffic flows, pollution, vibration and extraordinary visual intrusion. These include in particular the Fort and Shalimar Gardens, which are inscribed on the UNESCO World Heritage List, as well as 26 others sites listed and recognized

by Lahori people as having important significance for their history, culture and identity¹. Included are also minority places of worship.

Moreover, the population density in the area from Chauburji to Shalimar (10-12 km of the route) is extremely high (21'880 to 31'132 persons/sq km) and the plans, if implemented, will remove people from the areas where they live and work and transfer them to a place that may not be culturally appropriate. As the planned route has changed several times, thousands of small shops owners and residents along the route have been told to vacate their businesses with little to no notice, resulting in potential loss of livelihood, and difficulty to secure housing.

The public has reportedly been given no definitive information as to the current route, while construction is underway and large parts of Lahore are being dug up and pillars inserted. In certain sections, citizens have only been given verbal notice days before demolition work has commenced, in violation of the Land Acquisition Act (1894), which denies them the ability to access legal remedies to temporarily or permanently halt the construction. Some only found out about acquisition when surveyors came to make markings on their property. Those who have received due written notice of the eviction have registered their cases against the project. Currently, there are 7 stay orders following citizens' appeal. These include the sites of Chauburji, Karpurthala house, Mominpura graveyard and Ali Town. All stay order hearings are set for Monday 18 January. Other cases are reportedly being registered almost on a daily basis.

Lahore residents who have been forced to vacate their homes have at best received a fraction of the value of their property, and only if they could produce complete property ownership papers; most of them, who do not possess property papers, have received nothing and their land is marked as public owned. As many of the evicted families live under the poverty level and a clear framework land acquisition, due compensation and timely payment is lacking, many do not have the means to find alternative housing and face the possibility of homelessness.

¹ These sites are 1) protected under the UNESCO World Heritage Convention: Fort and Shalimar Gardens (1642); 2) protected under Antiquities Act 1975: Gulabi Bagh Gateway (1655), Dai Anga's Tomb, Buddha ka Awa (17th century), Jani Khan's Tomb (1748), Mahabat Khan's Garden (late 16th century), General Post Office (1849), Chauburji (1646), Mauj Darya Shrine (1560), Zebunnisa's Tomb (1669, mughal era), Baba Mauj Darya Shrine (1591), Shah Chiragh shrine and Mosque (1627, mughal era), Railway Station, St. Andrews Presbyterian Church, Nabha Road (built 1860), Supreme Court Building Lahore, Kurri Bagh, Jain Mandir and historic vicinity; 3) protected under the Punjab Special Premises Preservation Ordinance 1985: Lakshmi Mansions (1935), Lahore High Court (1889), Delhi Milestone on McLeod Road and Naulakha Presbyterian Church (1853). Other protected sites are: 4) Miani Saab Graveyard, Royal Park/ McLeod Road, Old EFU House, Mominpura Graveyard, University of Engineering & Technology, Kapurthala House, old Anarkali, Aiwan-e-Auqaf building and garden (19th century). Other reported endangered sites dating from the colonial era or earlier are: 5) heritage corridors of Nicholson Road and McLeod Road (around 1940), Lahore Cathedral (1887), Shah Chiragh Garden (19th century), Aiwan-e-Auqaf Bagh, the PIA planetarium and the Jama Mosque Mauj Darya Bukhari.

Residents of the area, such as those in Karpurthala house or the Parachute colony, form close knit, interdependent and unique cultural entities whose forebears have resided there for a century or more. They will be forcibly removed from their neighbourhoods as a result of the project. Furthermore, the 25.9 km of the route which is elevated between 26 and 56 feet passes within metres of densely occupied private and public space effectively compromises both privacy and security. When finished, the train would convey 250 000 passengers daily, all of which would be able to see inside thousands of homes, which is culturally unacceptable.

The 1975 Pakistani Antiquities law Article 22, and the Punjab Special Premises Preservation Ordinance 1985, Section 11, state that no new construction can be undertaken within 200 feet of the perimeter wall of a heritage sites or listed building. Current constructions are between 10 and 50 feet away of the listed sites, which is insufficient for protection; plans of the project even go through the buildings of the General Post Office, St Andrews Presbyterian Church and the Shrine of Mauj Darya Bukhari. In addition to the registered heritage sites, countless other historic buildings that are not officially listed but fall under heritage law guidelines are along the train route and form a living heritage with the people residing in these neighbourhoods. As the projects is using “cut and cover technique” for the sections with tunnels, there will be nothing to provide a foundation, so buildings that have been destroyed in these areas, including one of the rare schools for disabled children, are not likely to be rebuilt.

It is alleged that UNESCO Pakistan, UNESCO Paris and the Director of Archaeology of Punjab have contacted the Government to demand that the project be modified and construction works be halted, and that these notifications have been ignored. The Government asked the Director General of Archaeology of Punjab to issue a non-objection certificate covering the sections where the Orange line would violate heritage laws. On 12 November 2015, the Director was removed from his post, without having complied with the request.

Lack of consultation and information

It is also alleged that the current Orange Line project is based on the technical proposal made by NORINCO, China’s North Industries Corporation, the details of which - tendering process, financing and costs, structural details, design and route and environmental impact studies - have never been made public by the Government. These details include crucial information concerning earthquake related safety initiatives for the constructions. This proposal, which violates different Pakistani laws prohibiting construction near heritage sites and activities leading to environmental degradation, was chosen over the JICA plan, developed

following a 2006 transport network feasibility study, which planned the Orange train line in underground tunnels, had strict measures protecting heritage, concerned community and the environment and was more acceptable and better adapted.

In July 2015, a first public hearing was organized about the projects of the Orange line. Concerned residents, business owners and citizens groups have been holding protests and contested the project since construction began in October 2015. The construction started and continued nevertheless. It is alleged that the route has changed at least 4 times since. Environmental impact assessments which should have been carried out following each revision of the project were not done, and a health impact assessment of the Orange metro line, both in the short and long terms taking into consideration increased heat and pollution, was reportedly also not completed.

A second public hearing proposing the new route, announced for 30 November 2015, did not take place. Instead, the Lahore Commissioner invited certain directly affected people and some interest groups to a presentation which merely repeated the information presented in July. Under international human rights law, consultations are required to explore every feasible alternative to the dislocation or forced removal of people from their homes, and must be conducted and considered prior to the beginning of any construction.

Serious concern is expressed that the continued construction of the Orange Metro line threatens the historical and cultural sites cited above and will likely result in the forced eviction of thousands from their businesses and residence, without prior consultation or alternative resettlement options. Additional concern is expressed at the failure to undertake a full environmental and social impact assessment of the projects' short-term and long-term consequences for the residents of the area, including respect to the rights to an adequate standard of living, right to health and cultural rights.

While we do not wish to prejudge the accuracy of these allegations, we would like to appeal to your Excellency's Government to take all necessary steps to secure the right to adequate standard of living and housing as defined in article 11 of the International Covenant on Economic, Social and Cultural Rights, which your country has ratified on 17 April 2008. The Committee on Economic, Social and Cultural Rights commenting on the right to adequate housing in its General Comment No. 4, stressed that the right to housing should not be interpreted in a narrow or restrictive sense such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. The right to housing includes guaranteeing: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy. Indeed, housing is

not adequate if it does not respect and take into account the expression of cultural identity.

We would also like to refer to Committee on Economic, Social and Cultural Rights' General Comment No. 7 on forced evictions, which stipulates that procedural protections are essential in relation to forced evictions, including, among others, genuine consultation, adequate and reasonable notice, alternative accommodation made available in a reasonable time, and provision of legal remedies and legal aid (paragraphs 15 and 16). We also wish to call your attention to the Basic Principles and Guidelines on Development-based Evictions and Displacement, prepared by a former Special Rapporteur on adequate housing, which provides guidance on the States' obligations before, during and after development-based evictions.

Furthermore, we would also like to draw your attention to article 15 of the Covenant on Economic, Social and Cultural Rights, which states that everyone has the right to take part in cultural life, and to the report of the Special Rapporteur in the field of cultural rights relating to the right of access to and enjoyment of cultural heritage (A/HRC/17/38). As cultural heritage represents values linked with the cultural identity of individuals and groups, access and enjoyment of cultural heritage also imply "contributing to the identification, interpretation and development of cultural heritage, as well as to the design and implementation of preservation/safeguard policies and programmes" and should therefore include consultations with all concerned communities before deciding on the destruction of sites of cultural or religious significance (para.58 and 79). The Special Rapporteur recommended that States recognize and value the diversity of cultural heritages present in their territories and under their jurisdiction.

The Special Rapporteur also stressed the duty of States not to destroy, damage or alter cultural heritage, at least not without the free, prior and informed consent of concerned communities (A/HRC/17/38, para. 80 (a) and (b)). Furthermore, States have the duty "to take measures to preserve/safeguard cultural heritage from destruction or damage by third parties" (A/HRC/17/38, in particular paras.78 and 80 a and b). Furthermore, the 2003 UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage stresses the responsibility of States to take all appropriate measures to protect cultural heritage in conformity with the principles and objectives of, inter alia, the 1972 Convention for the Protection of the World Cultural and Natural Heritage, ratified by your Excellency's Government on 23 July 1976, the 1968 Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works, the 1972 Recommendation concerning the Protection, at National Level, of the Cultural and Natural Heritage and the 1976 Recommendation concerning the Safeguarding and Contemporary Role of Historic Areas (Section IV), as well as not to intentionally destroy their own heritage, "whether or not it is inscribed on a list maintained by UNESCO or another international organization" (Section VI).

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

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information, clarification, and any comments you may have on the above-mentioned allegations.
2. Please explain the reasons for opting for a route of the Orange line that threatens the historical and cultural sites cited above and will result in the forced eviction of thousands, especially when an alternative route with less severe consequences was available.
3. Please explain how the decisions taken comply with Pakistani heritage laws and the human rights standards mentioned.
4. Please indicate whether and how concerned people and groups have been consulted about the plans entailing the described construction plan.
5. Please provide details of the measures taken to ensure the enjoyment of the right to adequate housing in keeping with international human rights obligations, in particular for the individuals and households who will be affected by involuntary resettlement as a result of the construction of the Orange line.
6. Please indicate what resettlement programs have been considered, whether these have been developed in conjunction with those affected, should the involuntary resettlements occur.
7. Please indicate what procedures you have in place to ensure adequate notice is provided prior to any forced removals and the availability of legal aid to assist residents and business owners should they wish to challenge the decisions.
8. Please indicate what administrative or judicial mechanisms are in place, both at national and municipal levels, to ensure access to remedies and accountability of various actors so that individuals and communities can claim their right to adequate housing.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and to prevent re-occurrence of these violations. In the event that the investigations support or suggest the allegations to be correct, we urge to ensure that accountability of any person responsible of the alleged violations is guaranteed.

We are intending to publicly express our concerns in the near future as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

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

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