

Mandate of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

REFERENCE: UA Housing (2000-9)
NPL 1/2012

22 February 2012

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 15/8.

In this connection, I would like to bring to your Excellency's Government's attention information I have received regarding **the alleged threatened eviction of 3,000 families from 13 informal settlements and the forced demolition of their housing on the riverbank settlements in Kathmandu, reportedly for a revitalization project in Kathmandu.**

According to the information received:

Some 3,000 families from 13 informal settlements on the banks of the Bagmati River in Kathmandu may face imminent forced eviction and forced demolition of their informal settlements by Government authorities. It is understood that these families could not afford formal housing. The reported reason for the threatened forced eviction and demolition of the informal settlements of the communities living along the Bagmati River is its rehabilitation.

It is understood that the Government planned the forced eviction to take place on 29 January after the Supreme Court of Nepal on 27 January had denied the issuance of an interim order in favour of the petitioners. However, following strong protests and complaints from various quarters of society, including political parties and human rights organizations, the forced eviction had been put on hold.

However, the communities that are currently at risk of being forcefully evicted have expressed their fear and uncertainty on the possibility that the government may evict them despite the assurances received so far. In this scenario, the humanitarian needs of the evictees are likely to be relatively high

given the timing (wintertime) and vulnerability of women, children and the very poor in particular.

Allegedly, the process was initiated without prior consultation with the communities living along the Bagmati River and no adequate alternative accommodation was offered, despite the afore-mentioned effective court decision to that effect.

While I do not wish to prejudge the accuracy of these allegations, I would like to draw the attention of your Excellency's Government to the applicable international human rights norms and standards, in particular Article 11.1 of the International Covenant on Economic, Social and Cultural Rights, to which Nepal is a party, which states that "the States Parties to present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including housing, and to the continuous improvement of living conditions". The Committee on Economic, Social and Cultural Rights commented the right to adequate housing in its General Comment No. 4, stressing 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. With "due priority to those social groups living in unfavorable conditions," 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. The Committee also added that "the right to housing should be ensured to all persons irrespective of income or access to economic resources

As repeatedly stated, including in resolutions 1993/77 and 2004/28 of the Commission on Human Rights, forced evictions constitute prima facie violations of a wide range of internationally recognized human rights and large-scale evictions may only be carried out under exceptional circumstances and in full accordance with international human rights law. According to the General Comment No. 7:

"15. Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

"16. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to

provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”

In view of this, I wish to recall the Basic principles and guidelines on development-based evictions and displacement (contained in document A/HRC/4/18) that aim at assisting States in developing policies and legislations to prevent forced evictions at the domestic level. Your Excellency’s Government may find useful in the current circumstances the sections of the guidelines that focus on State obligations prior to, during and after evictions.

I would also like to note your Excellency’s Government’s constitutional guarantees referred to in its national report of 12 November 2010 to the Universal Periodic Review: “The Constitution has adopted a policy of establishing the right of all citizens to housing, and uplifting and providing shelter to marginalized communities through reservation, and a policy of implementing a scientific land reforms program. The GON is implementing the national housing policy, founded on the concept of "housing for all", and with the objective of providing government support to low-income groups and ensuring planned human settlement. The TYIP has committed to provide safe and affordable housing facilities while promoting planned settlement” (A/HRC/WG.6/10/NPL/1)

As it is my responsibility, according to the mandate entrusted to me by the Human Rights Council, to clarify all allegations brought to my attention. I would greatly appreciate detailed information from your Government concerning the above situation and about the measures taken by the competent authorities. I would in particular appreciate to receive information on the following points:

1. Are the facts alleged in the above summary of the case accurate?
2. Could you please indicate the legal basis of the planned eviction?
3. Did appropriate consultations take place with the affected community? If yes, please provide details, date and outcome of these consultations.
4. To what extent has appropriate compensation been foreseen for all concerned persons, with a due assessment of the loss of their housing?
5. What measures have been foreseen to ensure that the evicted persons will not become homeless?
6. What has been foreseen in terms of relocation? If relocations have been designated for the relocation, please provide details on the exact location, including details on the area and quality of land, access to public services and livelihood sources.

I would greatly appreciate receiving from your Excellency’s Government within 60 days the above mentioned additional information. I undertake to ensure that your Excellency’s Government’s response to each of these questions is accurately

reflected in the reports I will submit to the Human Rights Council for its consideration.

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

Raquel Rolnik

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