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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

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 minority issues.

REFERENCE: UA Housing (2000-9) Poverty (1998-11) Minorities (2005-4)
PRT 1/2012

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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; Independent Expert on minority issues and the Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 15/8 16/6 and 17/13.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the **alleged imminent forced eviction of persons living in a situation of extreme poverty in Bairro de Santa Filomena, located in Amadora (Portugal)**.

According to information received:

In the settlement of Bairro de Santa Filomena, located in Amadora, there are currently 85 families (approximately 280 individuals) living under the threat of eviction without having been provided with adequate alternative housing. These include 23 children aged 5 or less, 49 children aged 6 to 12 and 4 persons aged 65 years or more, including one person aged 88. Most of the concerned people are from Cape-Verde. The population also includes individuals originated from Sao Tome e Principe, Guinea, Angola and Brazil. Most children were born in Portugal and 106 people have Portuguese nationality. Thirteen people present have a permanent disability or a chronic disease. It is to be noted that half the families have been living in the neighbourhood for over ten years and that several families have been living in the settlement for two to three decades.

The families that live in this settlement are extremely poor, with almost half of the working-age adults unemployed and two thirds of the families with at least one unemployed member. The estimated average income is between EUR250 and 300 per family per month, which is considerably lower than the poverty line of

EUR414 per individual per month as established for 2008 by the *Instituto Nacional de Estatística*.¹

The living conditions in the neighbourhood are poor, with inadequate hygiene conditions and no satisfactory waste disposal system. The hard living conditions are reportedly negatively affected by the already demolished houses and the rubble this causes.

The Municipal Council of Amadora (the Council) has planned eviction of inhabitants of Santa Filomena neighbourhood and demolitions of buildings. The first demolitions occurred in February and they have been happening on a regular basis until the present day. The inhabitants have been notified of upcoming demolitions starting 17 July and others were scheduled for 19 and 25 July. Furthermore inhabitants have been notified by the Municipal Council that they must leave their homes before the end of the month with no indication of a specific date.

As of today, 16 families – 51 persons of which 12 are aged 10 or less and 6 are between 10 and 18 years old – have received a notification of eviction. Some inhabitants have received a written eviction notice either stuck to their front door or delivered personally (if they were at home at the time); others were informed by telephone; others were informed orally during meetings with the Council. In some cases of oral warning, the Council alleges the inhabitants received a notification in 2007; the inhabitants however claim that this is not correct.

The Council is reportedly offering affected residents various alternatives, none of which are considered adequate or acceptable to them. Some families or individuals are eligible for rehousing under the *Programa Especial de Realojamento* (PER–Special Rehousing Programme). However, this rehousing programme is based on data collected in 1993, making it obsolete and not applicable to many inhabitants. In many cases the rehousing proposal made to families is unsatisfactory and completely inadequate given the family's situation or size. For instance, we received information that one proposal was to house three couples in a three room apartment.

Some inhabitants were given a specific time frame to find a new home to rent. The Council has offered support from Social Security to pay one, two or three months of rent. However, in regard to the economic and social situation of the inhabitants, it is most unlikely they will be able to obtain a rental contract in the private rental sector. Even if they did, it is reported that it would be impossible for the families to go on paying the rent once the months paid by the Council would be over.

¹ "Sobre a pobreza, as desigualdades e a privação material em Portugal", Instituto Nacional de Estatística, 2010.

Finally, it is reported that when the inhabitants refuse the Council's propositions, they are allegedly notified that the demolition will happen with or without their cooperation. They are also warned that in case they do not cooperate, the police will intervene.

While we do not wish to prejudge the accuracy of these allegations, we would like to remind your Excellency's Government of the applicable international human rights norms and standards relevant to this case.

Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Portugal is a party, 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".

With respect to the right to adequate housing, the Committee on Economic, Social and Cultural Rights (CESCR) stressed in its General Comment No. 4 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 unfavourable 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" (para. 7-8). The Committee also stressed (para. 6), that the enjoyment of the right to adequate housing must not be "subject to any form of discrimination", in accordance with Article 2(2) of the Covenant.

As repeatedly stated, including in resolutions 1993/77 and 2004/28 of the Commission on Human Rights, forced evictions constitute gross 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, by the CESCR:

"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, we wish to recall the existence of 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.

In addition we wish to draw the attention of your Excellency's Government to the provisions of the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Article 4(1) of the Declaration establishes that: "States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law." The proposed eviction may have additional serious implication including with regard to the health and welfare of affected individuals, those suffering from illness or people with disabilities, as well as the right to education of affected children. In this regard we would like to seek further information and assurances from your Excellency's Government.

Furthermore, Article 2(1) of the International Covenant on Economic, Social and Cultural Rights obligates each member State to ensure the immediate satisfaction of, the very least, minimum essential levels of all economic, social and cultural rights, including: basic shelter and housing, for all members of society (General Comment 3, para. 10).

The principle of progressive realization does not exclude immediate obligations ; steps towards this goal must be taken immediately.

Furthermore, according to Article 2(1), States parties must devote the “maximum available resources” to ensure the “progressive realization” of all economic, social and cultural rights. In General Comment 3 (para. 9), the Committee on Economic, Social and Culture Rights stressed the existence of a strong presumption that deliberately retrogressive measures that affect the level of enjoyment of economic, social and cultural rights are in violation of the State’s obligation under Article 2(1). In adopting retrogressive measures, States must demonstrate that they have been introduced after “the most careful consideration” of all alternatives and that they are “fully justified by reference to the totality of the rights provided for in the Covenant”.

We further wish to draw your Excellency's attention to the principles of non-derogation and non-retrogression with regard to economic, social and cultural Rights. In its General Comment 16, the CESCR specifically noted that "Article 3 sets a non-derogable standard for compliance with the obligations of States parties as set out in articles 6 through 15 of ICESCR." (para 17) The CESCR has also concluded that "[i]f any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State Party's maximum available resources." (General Comment 15).

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 persons in compliance with the above international instruments.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Have complaints been lodged by the affected community or other parties, with respect to the imminent eviction?
3. Was a formal eviction notice issued to the residents? If not, why not?
4. Did appropriate consultations take place with the affected community? If yes, please give the details, date and outcome of these consultations.
5. Have alternative rehousing options been explored with the affected community? If not, why not?
6. Please provide information on measures foreseen by the authorities to ensure that the evictions do not result in the affected persons being made homeless. In this regard please explain how the proposal by the Council to offer support from Social Security to pay a couple of months' rent will truly enable affected families to enter the rental market.
7. Please provide details on PER (the special rehousing programme), on the number of affected households eligible for PER, and on the rehousing alternatives offered to these households. Please also indicate whether there is any plan to update the 1993 census on which PER was based to account for changes in demography and living and housing conditions in the neighbourhood of Santa Filomena.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will 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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