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PROCEDURES SPECIALES DU
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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 and the Special Rapporteur on extreme poverty and human rights

REFERENCE: UA Housing (2000-9) Poverty (1998-11)
NPL 3/2012

15 May 2012

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 on extreme poverty and human rights pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/8 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 demolition of 249 houses and the forced eviction of 994 residents of the settlement 'thapathali' on the bank of the Bagmati river, in Kathmandu.**

From the outset, we would like to recall the previous communication 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, on the alleged threats of evictions of 3,000 households from 13 informal settlements on the Bagmati river (dated 22 February 2012, reference UA Housing 2000-9). It is feared that the eviction of the thapathali settlement is only the first of a series of evictions of those living in the Bagmati river bank settlements in the Kathmandu valley.

According to information received:

On 8 May 2012, at 5am, 249 houses and a community school in the thapathali settlement on the Bagmati river bank were reportedly demolished by bulldozers, in the presence of 3,000 police and security forces. It is estimated that 994 people, including 401 children, were forcibly evicted. No alternative land or housing was provided to them.

The eviction was marked by clashes between the police and protesters, leaving three police personnel and four protesters heavily injured, with up to 20 others lightly injured. The police fired five to ten rounds of tear gas shells. Allegedly the police also fired rubber bullets to control the crowd. It is alleged that excessive

force was used. During these events 40 persons, including women and children, were arrested; women and children were released the same day, and the men on 9 May.

It is reported that a general notice of eviction of all settlements on the river bank was posted in a national newspaper on 9 November 2011. Negotiations were under way between residents' organizations and the government, with the hope to agree on resettlement measures. Allegedly these negotiations were not over when the above-mentioned eviction took place. No written notice announcing the date and time of the eviction was issued and families were thus unprepared for the eviction. They allegedly did not have sufficient time to pack their belongings (cooking utensils, tools, clothes, citizenship papers, etc.).

Reportedly, the government has announced it will provide Rs. 15,000 (approximately USD 180) to each family that the government considers 'real' residents of the settlement, to cover three months-rent of a room in Kathmandu. As of 11 May no money had been distributed to families. It is also reported that families fear they would not find places to rent given the overall reluctance of flat owners in Kathmandu to rent to those they consider 'squatters'. No compensation for loss of housing or personal property, or other type of material support, has been offered to the evicted residents.

Families have allegedly been staying on bare land at the site, without any shelter, food, water, or other support given to them. Moreover, families who took refuge under trees at the thapathali site are allegedly being harassed by police and security forces to leave the place, and are not allowed to build tents or simple shelters. With nowhere else to go, evicted families are refusing to leave until alternative accommodation is provided.

Concerns have also been raised about children's access to education, as a school run by the community, in which 300 children were enrolled, was destroyed.

It has been reported that government authorities announced they had purchased a piece of land, allegedly on the outskirts of Kathmandu, far from the current location of the thapathali settlement. However no concrete information has been provided on the relocation site, and it is unclear whether the land has indeed been purchased and, if so, whether any basic services and housing are being provided.

Reportedly the Government considers the inhabitants of the thapathali settlement as encroachers, while other sources indicate that in this settlement, most people had been living there for about six years and had no other place to go. The Government claimed that it conducted an assessment of the thapathali settlement and found that only 182 families were "genuine landless and squatters". Questions have been asked as to the legitimacy and thoroughness of the verification process. On 11 May, it was reported that the Government plans to conduct another assessment in the thapathali site to identify "genuine landless people" giving rise to questions as to the credibility of the first assessment.

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. Article 25 of the Universal Declaration of Human Rights (UDHR) also recognizes the right of everyone "to a standard of living adequate for the health and well-being of himself and of his family". Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, to which Nepal 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". Article 27 of the Convention on the Rights of the Child also recognizes "the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development."

The Committee on Economic, Social and Cultural Rights 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".

As stated 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 and mass evictions may only be carried out under exceptional circumstances and in full accordance with international human rights law. According to General Comment No. 7 of the Committee on Economic, Social and Cultural Rights:

"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 particular, Section V of the Basic principles and guidelines outline minimum conditions that must be ensured at resettlement sites, such as adequate housing, essential food, water and sanitation, access to health care and other services, and education.

We would also like to draw the attention of your Excellency's Government to the provisions of article 2(1) of the ICESCR, which states that 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".

Furthermore, article 2(1) 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 sustenance, essential primary health care, basic shelter and housing and basic forms of education, for all members of society (General Comment 3, para. 10).

As it is our responsibility, according to the mandate entrusted to us by the Human Rights Council, to clarify all allegations brought to our attention. We would therefore greatly appreciate detailed information from your Excellency's Government concerning the above situation and about the measures taken by the competent authorities. We 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. Have complaints been lodged by the affected community?
3. Did appropriate consultations indeed take place with the affected community? If yes, please give the details, date and outcome of these consultations. Why were these consultations stopped?
4. What was the legal basis for the arrest of 40 persons on the day of the eviction? Have legal charges been filed against them?
5. What measures have been put into place to ensure continued access to education for the evicted children?

6. To what extent have measures of compensation been put in place for all concerned persons, with a due assessment of the loss of their housing and livelihood?

7. When will the sum of Rs. 15,000 be distributed to residents for three-months rent? What measures have been foreseen to ensure that all evicted households do not remain or become homeless? What measures have been put into place to ensure the immediate satisfaction of minimum essential levels of standard of living for the affected persons?

8. What has been foreseen in terms of relocation? If sites have been designated for relocation, please provide details of the exact location, including details about the area and quality of land, access to public services and livelihood sources.

9. What measures have been foreseen to ensure that future demolition of river bank settlements take place with due regard to procedural guarantees and to the rights of affected residents, including that consultations with affected residents take place and access to alternative accommodation be facilitated or provided prior to conducting evictions?

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.

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

Raquel Rolnik

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