

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:
AL ITA 3/2018

21 September 2018

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 Human Rights Council resolution 34/9.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the alleged intention to forcibly evict the Mokthari family from their home and to an increasing number of forced evictions.

According to the information received:

On 12 September 2017, DoBank, a bank who bought the non-performing loans of the apartment of the Mokthari family, attempted to carry out a forced eviction of the family in San Martino di Lupari, Padua.

The concerned family, a mother and her four children, could no longer afford the mortgage payment of their apartment after ten years of the payment of nearly 40,000 EUR. At the time of writing, the family has paid close to the full purchase price of the house.

The family's lawyer proposed to DoBank that the family make a lease contract with the bank and pay a monthly rent of 250 EUR. The proposal was not accepted by the bank.

The Mayor of the City of San Martino di Lupari denied his obligations to intervene and declared the closure of the case. He provided only a general possibility of temporary relocation of part of the family to a building owned by a Cooperative in another municipality.

The Unione Inquilini (Tenants Union) activists intervened and obtained the agreement to postpone the eviction based on the fact that the family had no housing alternatives that meet the human rights standards protected by the Italian and international laws.

A hearing of the case will take place at the Court of Padua on 19 March 2019.

Despite the proposals and reminders provided by the Tenants Union over the past year, the municipal administration of San Martion di Lupari has not found housing alternatives or has not offered any public housing to the affected family.

At the end of July 2018, the Carabinieri of San Martino di Lupari warned the family that they were planning to forcibly evict them from the property at the beginning of September 2018.

This is an emblematic case of an increasing number of forced evictions occurring throughout the country. The last Interior Minister's report underlines the seriousness of the situation: 59,600 eviction sentences issued in 2017, of which, more than 52,500 were for rental arrears. 29,000 evictions, or 130 evictions per day on average, were carried out with public forces. Many people were forcibly evicted without alternative accommodations available. This is, in large part, caused by the financial crisis that has been affecting low and middle income families, who are unable to pay for the costs of their homes, combined with the lack of public social housing. Only 900 social housing are available while almost 650,000 families are on the waiting list.

Furthermore, on 1 September 2018, the Circular N. 11001/123/111 (1) Uff. II-Ord. and Sic. of the Cabinet of the Minister of the Interior was published (Gabinetto del Ministro dell'Interno. Circolare del 1° settembre 2017 - Misure in materia di occupazioni arbitrarie di immobili), in order to accelerate the evictions of people who occupy buildings without legal title or in precarious security conditions. The evictions could concern occupations of vacant buildings, nomad camps or other structures inhabited by poor people, citizens, refugees and migrants.

I am deeply concerned by DoBank's and Carabinieri's plan to forcibly evict the Mokthari family from their home contrary to international human rights law and standards. I am also gravely concerned by the Government's apparent policy to forcibly evict those affected by financial crisis throughout Italy. This too is contrary to international human rights law, which understands forced evictions as a gross violation of human rights and must not be carried out except in the most exceptional of circumstances.

While I do not wish to prejudge the accuracy of these allegations, I wish to appeal your Excellency's Government to seek clarification on the information drawn to our attention and share my concerns in relation to present circumstances in light of the applicable international human rights norms and standards.

I wish to draw the attention of your Excellency's Government to its obligations under article 11.1 of the International Covenant on Economic, Social and Cultural Rights ratified by Italy on 15 September 1978 which states that "[t]he 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 States Parties will take appropriate steps to ensure the realization of this right [...]". The Committee on Economic, Social and

Cultural Rights in its General Comment No. 4 has stressed that the right to adequate housing includes various aspects such as affordability, accessibility and legal security of tenure; and in its General Comment No. 7 has noted that States must ensure, prior to carrying out any evictions, that all feasible alternatives are explored in consultation with the affected persons, that alternatives are provided to avoid homelessness and that due process is ensured.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate if all feasible alternatives to eviction have been explored in the alleged case and if so, please provide details as to why proposed alternatives to the eviction have been deemed unsuitable.
3. What measures are in place to ensure that Banks and local authorities do not carry out forced evictions or demolitions in violation of the international and domestic human rights obligations?
4. Please indicate what legal procedures and remedies are available, including notice periods, and access to legal aid and to adjudicative bodies, for the residents to challenge eviction.
5. Please provide information in detail on steps taken by the Government to ensure affordability of houses including through subsidies, social housing or other measures.

I would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

Leilani Farha

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

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, I would like to remind your Excellency's Government of its obligations under various international human rights instruments, in particular the International Covenant on Economic, Social and Cultural Rights to which Italy is a party since 1978, and more specifically article 11.1 recognizing the right of everyone to an adequate standard of living for himself and his family, including food and housing, and to the continuous improvement of living conditions.

The Committee on Economic, Social and Cultural Rights in its General Comment No. 4 has stressed that the right to adequate 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. This General Comment outlines the following aspects of the right to housing: (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.

Furthermore, according to the Committee's General Comment No. 7 on forced evictions, paragraphs 15 and 16, 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. In paragraph 17, the Committee further emphasizes that 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.

I 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.