

**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 ZAF 2/2020

19 August 2020

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 allegations of ongoing forced evictions of residents of the Marievale military base and the Happiness Village by the South African National Defence Force, and the continued intimidation, harassment, humiliation and assault of the residents used to pressure them to leave their homes.** I would also like to bring to your attention that the aforesaid would be taking place in midst of the COVID-19 pandemic, in defiance of court orders and in spite of the prohibition of evictions issued by Government's regulations concerning "alert level 3 during Coronavirus COVID-19 lockdown".

According to the information received:

In November and December 2017, approximately 600 people were forcibly evicted by the South African National Defence Force (SANDF) from their place of residence on the Marievale Military base, situated between Nigel and Springs in Gauteng. Many of the residents, which included former SANDF officers and employees, had lived on the military base for more than a decade.

In May 2018, the North Gauteng High Court declared the evictions unlawful in that they were carried out without a court order, in violation of the residents' rights not to be evicted from their homes without an order of court made after consideration of all the relevant circumstances and to have their dignity respected and protected, in accordance with sections 26(3) and 10 of the Constitution (Case No. 22663/2018). The Court found that, despite the fact that the occupation of Marievale by civilians was prohibited by the Department of Defence Policy since 2000, the occupation was allowed to take place due to "inaction, oversight or simple unconcern by the military over a period of many years, in some instances

almost a decade”.<sup>1</sup> The Court ordered that, pending the finalization of any legal eviction proceedings that may be launched or the finalization of an agreement between the parties, the SANDF was to allow the residents to occupy the premises in the Marievale Military Base for residential purposes and/or to provide temporary adequate alternative accommodation in case the specific state quarters previously occupied by the residents were not fit for habitation or had been allocated to or were occupied by members of the SANDF. The Court furthermore ordered the SANDF to refrain from harassing, threatening or intimidating the residents and restricting their movement to and from the Military Base, on condition that, save for the occupation of the premises for residential purposes, the residents were not to interfere with military activities, the duties of the members of the SANDF or training conducted at the Military Base or exercise their rights of entry and exit from the base in such a fashion or at such times as to compromise the military security of the base.

In November 2018, the residents had not yet been allowed to return to their homes, nor were they provided with alternative accommodation. They therefore asked for the SANDF to be held in contempt of court. The High Court did not find the SANDF in contempt but reaffirmed and supplemented its order of May 2018.

In January 2019, the Pretoria High Court dismissed an appeal filed by the SANDF against the Court’s orders mentioned above and instructed the SANDF to comply with its previous orders, namely to allow the residents evicted from the Marievale Military base to return to their homes and/or provide alternative accommodation.

In September 2019, the Ekurhuleni municipality convened some meetings with the residents to discuss their relocation. However, residents’ lawyers were excluded from these meetings. As a result, some residents refused to engage further with the municipality. The residents evicted from the military base have not been able to return to their homes and have since settled in the Happiness Village informal settlement, which is adjacent to the Marievale Military base.

Since September 2019, additional evictions have taken place in the military base as well as in the Happiness Village, and have continued during the COVID-19 pandemic. This has occurred in spite of the prohibition of evictions included in the Government’s regulations concerning “alert level 3 during Coronavirus COVID-19 lockdown”. Regulation no. 36 stipulates that a person may not be evicted from his or her land or home during the period of Alert Level 3 and that evictions order by the courts are stayed and suspended until the last day of the Alert Level 3

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<sup>1</sup> [Rex and Others v Minister of Defence and Military Veterans and Others \(22663/2018\) \[2018\] ZAGPPHC 348 \(9 May 2018\)](#), para. 9.6

period, unless a court decides that it is not just and equitable to stay and suspend the order until the last day of the Alert Level 3 period.<sup>2</sup>

In May 2020, evictions continued. Moreover, the SANDF and the Ekurhuleni municipality put pressure on residents to sign relocations forms. Some of the residents signed them and have since been moved to Duduza, but others refused to relocate in the absence of a relocation plan.

On 21 May 2020, the High Court declared the new evictions unlawful and ordered the SANDF to refrain from: evicting or seeking to evict the residents; intimidating, threatening and/or assaulting the residents; causing any further damage to residents' property; and preventing the residents' access to the property.

On 29 May 2020, on the occasion of a site visit, the SANDF committed to the relocation of the residents only on the basis of a relocation plan, which will be developed by the Ekurhuleni municipality, and the agreement of the residents. Notwithstanding this, it has reportedly resorted to intimidation, harassment and assaults of the residents as a means to pressure them to leave.

During July 2020, acts of intimidation and harassment by the SANDF have been escalating and the situation in the Happiness Village has been described as an ongoing "siege", with residents instructed to remain in their homes and harassed and questioned by the army when leaving their houses. Military training exercises are also conducted in the vicinity of the Happiness Village. On 20 July 2020, for example, approximately 20-30 soldiers took part in a training which started at mid-night and entailed the throwing of practice hand grenades, smoke grenades and the discharging of fire arms. Moreover, some officers have been reported to throw practice grenades directly at residents. Furthermore, SANDF officers have been closing "tuck shops" run by the residents and used for their supply of staple food and other items. These restrictions seem however to have been lifted on 29 July, after complaints were filed with the judiciary. In addition, trenches and a fence have been erected around the Happiness Village, restricting residents' free movements. As of 29 July 2020, the residents had to pass through a check-point in order to leave the area. Similarly, people who wish to come to the Village are controlled at the check-point and may be impeded access, as it happened in the case of some journalists who wanted to report on the events affecting the residents and of residents' legal representatives who came to meet the residents.

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<sup>2</sup> <https://www.gov.za/coronavirus/alert-level-3#evictions>, Regulation no. 36 on prohibition of forced eviction.

Without prejudging the accuracy of the information received, I wish to express my serious concern about the forced evictions of the families living the Marievale military base and Happiness Village and the threat of further forced evictions, without any resettlement or alternative accommodation proposed by the relevant state authorities, contrary to international human rights law. I am also alarmed at the intimidation, harassment and assaults of the residents, which appear to be used as a means to force them to relocate, against their will. I am furthermore deeply concerned that these situations are occurring in the context of the COVID-19 crisis, thereby exposing these families to a great risk for their health and life, and heightening the risk of spreading the contagion.

I would like to draw the attention of your Excellency's Government's to its obligations under article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by South Africa in 2015, which recognizes the right of everyone to an adequate standard of living for himself and his family, including housing, as well as its obligations under articles 6 and 17 of the International Covenant on Civil and Political Rights (ICCPR), ratified on 1998, on the rights to life and to non-interference with privacy, family, home or correspondence. As clarified by the Committee on Economic, Social and Cultural Rights, in its General Comment No. 7, forced evictions are a gross violation of the right to adequate housing and may also result in violations of other human rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.<sup>3</sup> Paragraph 15 of the same General Comment provides that if an eviction is to take place, procedural protections are essential, 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. Under no circumstances, evictions should result in homelessness, and the State party must take all appropriate measures to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available to affected individuals, where they are unable to provide for themselves.

I would also like to refer your Excellency's Government to the Principles on security of tenure for the urban poor (A/HRC/25/54) and Guidelines for the Implementation of the Right to Adequate Housing (A/HRC/43/43), notably guideline no. 6 on forced evictions, as well as the "COVID-19 Guidance Note: Prohibition of evictions" elaborated by my predecessors. In addition, I would like to recall the "Principles and Guidelines on the implementation of economic, social and cultural rights in the African Charter on Human and Peoples' Rights" elaborated by the African Commission on Human and Peoples' Rights, which state that housing rights are protected through the combination of provisions protecting the right to property (art 14), the right to enjoy the best attainable standard of mental and physical health (art 16), and the

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<sup>3</sup> The Committee on Economic, Social and Cultural Rights, General comment No. 7: The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions (1997), para. 4.

protection accorded to the family (art 18(1)) of the African Charter, to which South Africa is a State Party.

Given the urgency of the situation of persons affected by the evictions and those at the risk of further evictions, I call upon your Excellency's Government to urgently halt any ongoing evictions and ensure that evicted persons are provided with alternative accommodation and necessary assistance in accessing food, clothing, water and sanitation facilities and services. I also urge your Excellency's Government to identify a permanent solution to fulfil their housing needs in the long term. Such measures should start by a prompt investigation on the number of persons affected (including disaggregation by gender, age, disabilities and other factors) and their needs, while ensuring their meaningful participation in the planning and delivery of the assistance, as well as in any decision that may affect their human rights. I also urge your Excellency's Government to halt any act of intimidation and harassment against the residents at the Marievale Military base and the Happiness Village. Furthermore, in the context of the current crisis caused by the COVID-19 pandemic, I urge your Excellency's Government to uphold the prohibition of eviction issued with regulation no. 36 and ensure that no evictions are carried out until the end of the pandemic and for a reasonable period of time thereafter.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, I 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 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 provide detailed information on the evictions conducted since May 2020, disaggregated by number, gender, age, disabilities, socioeconomic status and other indicators of the persons affected.
3. Please indicate the legal basis for the evictions, especially in light of the High Court's orders of May 2018, January 2019 and May 2020 as well as Government's regulation no. 36 on prohibition of eviction during the period of alert 3 level due to the COVID-19 pandemic, and whether the people affected were consulted and received adequate and reasonable notice prior to the evictions and had access to effective legal remedies.

4. Please provide information on any specific measures taken by the Government to prevent the negative human rights impact of the evictions, including the rights of residents to adequate housing (both emergency shelter and long-term accommodation solutions), health, water and sanitation, food and education, as well as on any specific action taken to protect the rights of the persons affected by the evictions and at risk of eviction due to the heightened risks for their health in the context of the COVID-19 pandemic.
5. Please indicate if all feasible alternatives to eviction have been explored in the alleged case. In the affirmative, please provide details as to why proposed alternatives to the eviction have been deemed unsuitable. In the negative, please explain why feasible alternatives to the eviction were not explored.
6. Please describe what concrete housing alternatives are currently available to the families evicted since November 2017 to ensure that no one remains homeless or lives in substandard conditions as a result of the eviction.
7. Please indicate how it ensured that the persons evicted and those at risk of evictions from the Marievale military base and Happiness Village participate meaningfully in the design, implementation and monitoring of the relocation plan that is reportedly being developed by the Ekurhuleni municipality and what special measures have been adopted to ensure the participation of women, persons with disabilities and other groups who may be experiencing discrimination and marginalization.
8. Please provide information on the measures adopted in practice to ensure full application of the Government's Regulation No. 36 on the prohibition of eviction during the alert level 3 period related to the COVID-19 pandemic and any action taken to ensure access to effective remedies in case of violation.

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 responsible of the alleged violations.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release

will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Balakrishnan Rajagopal  
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