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 the promotion of truth, justice, reparation and guarantees of non-recurrence

REFERENCE:
AL RUS 6/2020

11 September 2020

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; and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 43/14 and 36/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the situation faced by the victims of the political repression of the Soviet era in respect of access to adequate housing and their right to a prompt and effective remedy**.

According to the information received:

Between 1917 and 1991, more than 11 million people were affected by the political repression of the Soviet Government that entailed forced transfers of the population and forced evictions of persecuted individuals and their families. In Moscow, thousands of people lost their homes because of the political persecution and were forcibly relocated or transferred to forced labour camps.

On 18 October 1991, the Parliament of the Russian Soviet Federative Socialist Republic enacted the Law No. 1761-1 "on rehabilitation of victims of political repression" ("Law on Rehabilitation") with the purpose of rehabilitating the victims of the political repression and providing them with compensation for the harm caused. In particular, article 13 of the Law on Rehabilitation recognizes the right of the victims of political repression to return to the places where they resided at the time of the repression. It further provides for their right to social housing in replacement for their lost homes. These rights are recognized also in favour of the members of the rehabilitated victims' families or other relatives who resided together with them before the repression, as well as the children who were born in the places of detention, displacement, forcible deportation, and special settlements. Before subsequent amendments were introduced, article 13 of the Law on Rehabilitation stipulated that rehabilitated victims, including their families and children, were to be given priority in the waiting lists for social housing and the related housing expenses were to be charged to the federal budget.

In 2004, article 13 of the Law on Rehabilitation was amended. Following the amendments, rehabilitated victims have lost priority in the allocation of social housing and regional authorities have been charged with regulating the matter, with regional budgets funding the housing expenditures. In its relevant parts, article 13, as amended, presently lays down that "[i]n case of return to the former place of residence, rehabilitated persons and their relatives are put on the waiting list for accommodation and are provided with housing in the order established by the regions of the Russian Federation".

Since 2005, almost all Russian regions have introduced regulations governing access to social housing. These regulations impose restrictive conditions for those who wish to return to their former place of residence. For example, in Moscow, pursuant to articles 7 and 8 of the Moscow City Law of 14 June 2006 No. 29 "On the Realization of the Right to Housing for Residents of Moscow", in order to access social housing, victims of the political repression are required to fulfil the following criteria: i) have resided in Moscow for at least 10 years at the time of the application for social housing; ii) do not own any other real property; iii) do not have sufficient housing space; and iv) be indigent. Most victims who live in other regions of Russia or abroad cannot meet these requirements and cannot afford returning to the capital. In addition, since rehabilitated victims are now included in the general social housing waiting list, many victims may, in practice, never be able to receive social housing due to their age and the current waiting time, which for Moscow, for example, is approximately 30 years.

On 17 March 2019, some of the victims[1] filed a case with the Constitutional Court challenging the constitutionality of article 13 of the Law on Rehabilitation and articles 7 and 8 of the Moscow City Law "On the Realization of the Right to Housing for Residents of Moscow". The claimants alleged that the absence of priority allocation of housing to the victims of the political repression, coupled with the fact that rehabilitated victims are only eligible for social housing after their return to their home city at their expenses and that that the right to return is subject to a number of restrictions in the regional laws, result in the denial of the victims' constitutional right to remedy. They invoked, among others, articles 40 (right to housing), 52 (access to justice) and 53 (compensation for harm caused by the state) of the Constitution.

On 10 December 2019, the Constitutional Court handed down its decision on the case. The Court found that the application of the provisions establishing the order and conditions for citizens' access to social housing to persons who have been recognized as having the right to return to their place of residence prior to repression, makes it impossible to compensate them for the harm caused, including in respect of their right to housing. The Court declared unconstitutional article 13 of the Law on Rehabilitation and articles 7, paragraphs 3 and 5, and article 8, paragraph 1 and part 2 of the Moscow City Law and requested that relevant legislation at federal and regional levels be amended. The Court stated

[1] Children of the deportees

that the State has an obligation to provide effective support to citizens who have lost their opportunity to independently secure a decent life and free development as a result of the damage caused by State's action. It emphasized the obligation of the State to strive for the fullest possible redress for such harm through the greatest possible use of available means and financial and economic potential (section 2 of the decision). It further indicated that the regulation of human rights and freedoms falls under the exclusive jurisdiction of the federal legislator and that it is the competence of the federal legislator to establish a specific mechanism for the exercise of the right to housing, including conditions and priority of the provision of housing, to various categories of persons, including rehabilitated persons (section 3 and 4). The Court clarified in particular that the legal regulation of the provision of housing to persons who have been recognized as having the right to return to live in those areas and localities, where their parents had resided before the repression, should be carried out by the federal legislator on the basis of a balance of interests of all categories of citizens who, on relevant legal grounds, are entitled to housing (section 4).

In April 2020, the Ministry of Construction and Housing prepared a draft law in response to the Court's judgment with a view to amending article 13 of the Law on Rehabilitation. The draft law will be examined by the Duma during its regular session starting on 14 September 2020. The draft legislation provides for victims' access to housing subject to the criteria established by regional regulations, but regardless of the period of their residence in the localities and settlements to which they return (intend to return), place of residence, property status and the existence of grounds for recognizing them as needing residential premises. The draft law leaves the regulation of access to housing to the regional legislator and the regional budget, which are reportedly limited. It does not make provisions concerning the budget to be allocated for the social housing programme, does not include criteria for the prioritization of housing for the victims of the political repression of the Soviet era, does not coordinate the variety of requirements imposed by the regional regulations and does not define a timeframe for the compensation of the harm caused.

According to the information received, there would be approximately about 1,500 rehabilitated people falling under the protection of article 13 of the Law on Rehabilitation. The majority of them are older people of more than 70 years. Most of the rehabilitated people live in remote areas and their housing conditions vary from moderate to decrepit, with no sewerage, hot water and heating.

Without prejudging the accuracy of the information received, we wish to express our concern about the persisting consequences of the political repression of the Soviet era on the right to adequate housing of the victims, including their families and children, contrary to international human rights law. We welcome the decision of the Constitutional Court of 10 December 2019. We remain however concerned that unless prompt measures are adopted to ensure the required coordination between national and regional levels, as well as across regions, concerning the allocation of social housing to

the victims of the political repression within a defined timeframe and certain priority criteria, as well as the allocation and disbursement of the necessary funds, in compliance with international human right law, the right to housing of the victims may not be fully guaranteed. Considering the age of the some of the victims, these measures are a matter of urgency. We also wish to recall that States bear an obligation to provide those whose rights have been violated with an adequate, effective and prompt remedy.[2]

We would furthermore like to underline that victims of political repression, forced evictions and other forced transfer of population are entitled to adequate, effective and prompt reparation for harm suffered in accordance with the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (A/RES/60/147). While it is important that access to social housing should be guided by the principle of non-discrimination, the criteria for accessing social housing should ensure that victims of gross human rights violations have access to adequate, effective and prompt reparation, if reparation is provided mainly through the provision of social housing. Prompt reparation means in this context that the State is obliged to ensure that victims can access affordable housing at their former place of residence in reasonable time and that the victims are still able to benefit from the reparation during their life. Having to wait for more than two years before being able to return or access social housing, cannot be considered as prompt and is therefore not compatible with international human rights standards. If a shortage of social housing in a particular municipality renders prompt reparation in the form of accessing social housing impossible, alternative forms of reparation, including compensation or restitution are required. The compensation should be of sufficient volume to allow for the return of the affected individual to her or his former place of residence and to rent at this location decent housing that would allow for a life in dignity.

We wish to emphasize that the right to adequate housing is intrinsically linked to the inherent dignity of the human person and the right to life. We recall that the Committee on Economic, Social and Cultural Rights has indicated that States must allocate sufficient resources to the realization of the right to adequate housing and prioritize the needs of disadvantaged and marginalized individuals or groups.[3] The Committee has further clarified that the obligation to progressively realize the right to housing will almost invariably require the adoption of a national housing strategy. Strategies should be developed in consultation with affected groups, include clearly defined goals, identify the resources to be allocated and clarify responsibilities and a time frame for implementation. Moreover, steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies with the obligations under article 11 of the Covenant.[4] States must also ensure that local

[2] CESCR, General comment Nos, 3, 4 and 9; article 2 of the International Covenant on Civil and Political Rights.
[3] CESCR, General comments Nos. 3 and 4.
[4] CESR, General comment No. 4, para. 12.

or regional housing strategies are adequately resourced and that local governments have the capacity to implement them.[5]

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 our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.

2. Please provide detailed information on the housing situation of the victims of the political repressions of the Soviet era, including their children, disaggregated by gender, age, ethnicity and other social indicators.

3. Please indicate what urgent measures are in place to ensure access to adequate housing for the victims of the political repressions who are currently homeless or live in inadequate housing, if any.

4. Please provide information on any measures taken to ensure the participation of the victims in designing and implementing housing measures affecting them, including the formulation of the amendments of the relevant provisions in the federal and local legislation required by the Constitutional Court in its judgement of 10 December 2019.

5. Please describe the mechanisms in place to facilitate the timely and efficient allocation and disbursement of funds destined to the implementation of social housing programmes at regional level.

6. Please provide detailed information on the criteria used to define priorities in the allocation of social housing and how it is ensured that the victims of the political repression and their children receive adequate, effective and prompt access to social or other housing in reparation for the harm suffered.

7. Please explain how coordination and coherence is ensured between national and regional levels and across the regions with regard to the measures adopted to ensure victims' access to adequate housing in their home towns.

We would also kindly request that a copy of this letter is shared with Mr. Yaroslav Nilov, Chaiperson of the Parliament's Committee for Labour, Social Policy and Veterans

[5] A/HRC/43/43, para. 63.

Affairs as the Parliament is current considering revising federal legislation in response to the judgement of the Russian Constitutional Court.

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.

While awaiting a reply, we urge that all necessary interim measures be taken to ensure that victims of past forced displacements receive without undue delay a prompt and fair reparation, restitution or compensation for the loss and harm suffered in conformity with international human rights standards.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

Please accept, Excellency, the assurances of our 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

Fabian Salvioli
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government's to articles 8 and 25 of the Universal Declaration on Human Rights from 12 December 1948 setting out the right to an effective remedy and the right to housing in international human rights law. As further specified under article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Russian Federation on 16 October 1973, the Russian Federation is obliged to uphold 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, and to "take appropriate steps to ensure the realization of this right". This article must be read in conjunction with article 2.2 of the Covenant which provides for the exercise of any right under the Covenant without discrimination of any kind.

In its General Comment No. 4 on the right to adequate housing, the Committee on Economic, Social and Cultural Rights clarifies 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. The Committee further states that the right to adequate housing includes security of tenure, availability of services, affordability, habitability, accessibility, appropriate location and cultural adequacy. Moreover, it indicates that the obligation to progressively realize the right to housing will almost invariably require the adoption of a national housing strategy. Strategies should be developed in consultation with affected groups, include clearly defined goals, identify the resources to be allocated and clarify responsibilities and a time frame for implementation. In this regard, the Committee clarifies that coordination between ministries and regional and local authorities shall be ensured in order to reconcile related policies with the obligations under article 11 of the Covenant. It also indicates that effective monitoring of the situation with respect to housing is an obligation of immediate effect. Moreover, in its General Comments No. 3 and 4, the Committee states that the provision of legal remedies for the violation of the right to housing is a core component of States' obligation to ensure the realization of this right.

We would like to recall the recommendations addressed to the Russian Federation by the Committee on Economic, Social and Cultural Rights (E/C.12/RUS/CO/6, 2017) to continue, and step up, its efforts to increase the availability of affordable housing, paying particular attention to low-income families, and allocate the necessary resources for the effective implementation of the family housing programme. We also recall the Committee's recommendations to ensure that adequate resources are set aside for the provision of social housing, with priority given to the most disadvantaged and marginalized groups, including the forcibly displaced persons (E/C.12/RUS/CO/5, 2011).

We would also like to refer your Excellency's Government to the Guidelines for the Implementation of the Right to Adequate Housing (A/HRC/43/43) elaborated by 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, including guideline no. 11 on capacity and accountability of local and regional governments for the

realization of the right to adequate housing. We further draw to the attention of your Excellency's Government the reports of the Special Rapporteur on the right to housing relating to the human rights obligations of local governments (A/HRC/28/62), human rights-based national housing strategies (A/HRC/37/53) and the right to housing and access to justice (A/HRC/40/61). In her report on the right to housing and access to justice, the Special Rapporteur emphasizes, among other things, that where Governments or others require time to implement structural remedies, such as developing programmes to address the housing needs of particular groups, remedies should provide for independent supervision by the court or another authority, enforceable timelines, monitoring and reporting, and provision for participation and consultation with those affected.

Furthermore, we would like to recall article 6 of the International Covenant on Civil and Political Rights which protects the right to life. In its General Comment No. 36 on the right to life, the Human Rights Committee states that "the measures called for to address adequate conditions for protecting the right to life include, where necessary, measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter [..] and other measures designed to promote and facilitate adequate general conditions, such as [..] social housing programmes" (paragraph 26).

Lastly, we wish to recall that forced evictions have been recognized as a gross violation of human rights and we refer your Excellency's Government to CESCR's general comment no. 7 and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (A/RES/60/147), according to which remedies for gross violations of international human rights law include the victim's right to the following as provided for under international law: (a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; (c) Access to relevant information concerning violations and reparation mechanisms. As indicated in the Basic Principles and Guidelines, reparation includes the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (paragraph 18). Restitution includes, as appropriate, the return to one's place of residence (paragraph 19) We also recall article 2 of the International Covenant on Civil and Political Rights recognizing the right to an effective remedy.