

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 UZB 3/2020

15 December 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 43/14.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **the alleged imminent eviction of Ms. Olga Anatolievna Abdullaeva and her family, comprising her pregnant daughter and two grandchildren, and the demolition of her home, in the context of an urban renewal project in Tashkent affecting the residents of Adyk Azimov street.**

I recall that on 20 November 2020, I addressed to your Excellency's Government a communication concerning allegations of ongoing home demolitions and forced evictions, including of persons with disabilities, in the Surkhandarya and Tashkent provinces, without due legal protections, in order to make room for urban renewal projects (UZB 2/2020). Among other things, I asked your Excellency's Government to indicate whether consideration was given to suspending or halting evictions during the COVID-19 pandemic.

In light of the above, I welcome the suspension of the eviction of Ms. Abdullaeva by the Bureau of Compulsory Execution of the Yashnabad district of Tashkent city (Letter no. 556 of 30 November 2020). I am however concerned that according to the information received, the suspension is temporary and that a solution to the case that is fully compliant with international human rights law was not yet found. Welcoming the temporary suspension of the eviction, I am writing this follow-up communication to your Excellency's Government with the intention to avoid a potential violation of the right to adequate housing and of international human rights standards governing development-based evictions.

According to the information received:

Ms. Abdullaeva is the owner of a house in Azimov Street, in Tashkent, where she currently lives with her pregnant daughter and her two grandchildren, on the basis of a certificate of inheritance on real estate #2- 2175, issued by the State Notary Office No. 1 of the Yashnabad district, dated October 15, 2014 and registered in the cadastre service of the Yashnabad district, dated October 24, 2014

On 27 May 2018, the former mayor of Tashkent decided unilaterally to give a concession to a private company for the construction of 13-storey building in an area coinciding with the Toy-Tepa mahalla (block) in Azimov Street. According to the project, several houses were at risk of demolition but Ms. Abdullaeva's house did not figure among them.

During the summer of 2018, Ms. Abdullaeva received a notice of demolition. The private company then filed a request with the inter-district court of Mirabad to obtain the eviction of Ms. Abdullaeva and her family.

On 11 October 2019, the inter-district court of Mirabad issued an order of eviction. The Court's decision was based on Article 71 of the Housing Code, governing evictions from residential buildings of municipal, departmental housing stock and municipal housing stock, although Ms. Abdullaeva is the owner of the house. Ms. Abdullaeva was offered as alternative accommodation a house of smaller size in a remote area, near the former Tashkent central jail, and far from the children's Russian-language school. No Russian school is available in the area where the alternative accommodation is located. Moreover, the alternative accommodation is reportedly located in an area that is the object of an auction and where houses are thus as well at risk of demolition.

On 13 March 2020, the appeal instance of the Tashkent City Court for Civil Cases dismissed the appeal filed by Ms. Abdullaeva against the eviction order and upheld the decision of the inter-district court of Mirabad. The case is currently pending before the Supreme Court.

On 11 August 2020, the Deputy Ombudsperson issued a statement concerning the case highlighting that a number of national norms had been violated and that the evictions orders issued by the courts were consequently to be cancelled.

On 16 November 2020, the Ombudsperson sent a communication to the Supreme Court concerning the case of Ms. Abdullaeva, in which it pointed to the failure to comply with national provisions and regulations applying to the case and also highlighted issues with the expertise required to determine the market value of the building owned by Ms. Abdullaeva, which was estimated at a significantly reduced market price.

Although the matter is still pending before the Supreme Court, the eviction of Ms. Abdullaeva was scheduled for 1 December 2020. On 30 November 2020, the Bureau of Compulsory Execution of the Yashnabad district of Tashkent city ordered the temporary suspension of the eviction (Letter no. 556 of 30 November 2020). It is reported that an attempt at the forced eviction of Ms. Abdullaeva and her family was already carried out by the Bureau of Compulsory Execution at the beginning of September 2020, when officials began to load Ms. Abdullaeva's belongings onto a car. The eviction was halted after the protests

of the neighbours and social network users, which led to the intervention of the khokim (mayor) of the Yashnabad district and to the suspension of the eviction.

Without prejudging the accuracy of the information received, I wish to express my appreciation of the decision to suspend temporarily the eviction of Ms. Abdullaeva. However, I remain seriously concerned that Ms. Abdullaeva and her family remain at risk of forced eviction and the demolition of her home, without the exploration of all possible alternatives to eviction and resettlement in consultation with her and her family. As the suspension of the eviction order is only temporary, I am concerned that Ms. Abdullaeva, her pregnant daughter and two minor children are still facing the threat of imminent eviction without having provided so far with any durable housing solution in compliance with international human rights standards, satisfying the criteria of adequacy, accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services, such as health and education, which are needed by the family. Furthermore, I am concerned whether Ms. Abdullaeva will be adequately compensated for the planned destruction of her home. I am furthermore deeply concerned that evictions continue to occur in the context of the COVID-19 pandemic, thereby exposing the persons affected to a great risk for their health and life, and heightening the risk of spreading the contagion. In this connection, I wish to refer to your Excellency's Government to my report to the UN General Assembly on COVID-19 and the right to adequate housing, in which I called for a moratorium on evictions (A/75/148, para. 68).

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

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 information on the participation of Ms. Abdullaeva in the design and implementation of the construction project and the related human-rights impact assessment and on the results of these consultations.
3. Please indicate if and how all feasible alternatives to the home demolition and eviction have been explored. If alternatives have been considered, please provide details as to why proposed alternatives to the eviction have been deemed unsuitable. If no alternatives were considered, please explain why feasible alternatives were not explored.
4. Please indicate the legal basis for the eviction order affecting Ms. Abdullaeva, the duration for which the eviction has been suspended

and provide information on any action taken as a follow-up to the declarations of the Deputy Ombudsperson of 11 August 2020 and of the Ombudsperson of 16 November 2020.

5. In case there are no feasible alternatives to eviction and demolition of her home, please indicate why such a finding has been made and whether Ms. Abdullaeva will be able to return to her neighbourhood after the implementation of the construction project. If return is not possible, please explain the reasons why it is so.
6. Please provide information on how the alternative accommodation offered to Ms. Abdullaeva meets the criteria of adequacy, accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services and on how she will be compensated for any loss, including the house she owns and currently occupies with her family.
7. Please elaborate on whether any specific action was taken to protect Ms. Abdullaeva and her family in relation to their health risks in the context of the COVID-19 pandemic and whether consideration is being given to cancel her eviction.

I would also be grateful for your response to the earlier related communication covering various other home demolitions and evictions (UZB 2/2020) within the deadline therein specified. 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, I urge that all necessary interim measures be taken to prevent the eviction and home demolition. Furthermore, after exploring all feasible alternatives to eviction, should it be found that the housing demolition cannot be prevented, I urge you to ensure that the relocation and compensation offered to Ms. Abdullaeva and her family will be in full conformity with international human rights law and all relevant standards applicable to development-based evictions as outlined above.

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

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

Annex

Reference to international human rights law

In connection with above concerns, I would like to draw your Excellency's Government's attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation.

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 (ICESCR), ratified by Uzbekistan in 1995, which recognizes the right of everyone to an adequate standard of living for himself and his family, including housing. 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. I also would like to draw the attention of your Excellency's Government's to its obligations under articles 6 and 17 of the International Covenant on Civil and Political Rights (ICCPR), ratified in 1995, on the rights to life and to non-interference with privacy, family, home or correspondence.

Forced evictions are prima facie incompatible with the requirements of the Covenant.¹ 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. 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 also wish to refer your Excellency's Government to the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18, Annex 1) which specify that evictions can only take place in 'exceptional circumstances'; that they must be authorized by law, and ensure full and fair compensation and rehabilitation. The Guidelines indicates that States should take specific preventive measures to avoid and/or eliminate underlying causes of forced evictions, such as speculation in land and real estate. Urban or rural planning and development processes should involve all those likely to be affected and should include the following elements: (a) appropriate notice to all potentially affected persons that eviction is being considered and that there will be public hearings on the proposed plans and alternatives; (b) effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans

¹ See CESCR, General Comment No. 7.

specifically addressing efforts to protect vulnerable groups; (c) a reasonable time period for public review of, comment on, and/or objection to the proposed plan; (d) opportunities and efforts to facilitate the provision of legal, technical and other advice to affected persons about their rights and options; and (e) holding of public hearing(s) that provide(s) affected persons and their advocates with opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities. The Guidelines further states that States should explore fully all possible alternatives to evictions. All potentially affected groups and persons, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider. In the event that agreement cannot be reached on a proposed alternative among concerned parties, an independent body having constitutional authority, such as a court of law, tribunal or ombudsperson should mediate, arbitrate or adjudicate as appropriate. Moreover, the Guidelines states that States must give priority to exploring strategies that minimize displacement. Comprehensive and holistic impact assessments should be carried out prior to the initiation of any project that could result in development-based eviction and displacement, with a view to securing fully the human rights of all potentially affected persons, groups and communities, including their protection against forced evictions. “Eviction-impact” assessment should also include exploration of alternatives and strategies for minimizing harm.

As spelt out in the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement, when eviction is unavoidable, and necessary for the promotion of the general welfare, the State must provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interests in property. Cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better. The Guidelines also state that any settlement agreement must satisfy the criteria of adequacy, accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education. Furthermore, the Guidelines specify that, at a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. States should also ensure that members of the same extended family or community are not separated as a result of evictions. Alternative housing should be situated as close as possible to the original place of residence and source of livelihood of those evicted. The time and financial cost required for travel to and from the place of work or to access essential services should not place excessive demands upon the budgets of low-income households.

In addition, I would like to refer your Excellency's Government to the Guidelines for the Implementation of the Right to Adequate Housing (A/HRC/43/43) -

notably guidelines no. 6 on forced evictions and no. 12 on ensuring the regulation of businesses in a manner consistent with State's obligations and address the financialization of housing - as well as the "COVID-19 Guidance Note: Prohibition of evictions" elaborated by the former Special Rapporteur on the right to adequate housing. With regard to the regulation of business, I wish to underscore in particular that States may need to ensure, for example, not only that developers do not displace residents from affordable housing, but also that they produce needed affordable housing, that housing is not left vacant and that some of the profits from housing or other economic activities are redirected to ensure the availability of adequate housing for low-income households (A/HRC/43/43, paragraph 68).

Finally, I wish to emphasize that evicted persons have a right to return to their place of residence, when the circumstances allow for it and if they so wish, and that they should be prioritized.