

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

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(Please use this reference in your reply)

23 October 2023

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 extreme poverty and human rights, pursuant to Human Rights Council resolutions 52/10 and 53/10.

In this context, we would like to draw your attention to the information that we have received regarding **the draft law No. 566, titled “Introduction of Article 614-bis on the Criminal Code, on the protection of the inviolability of the home from arbitrary occupation, as well as provisions concerning the reinstatement of the owner or rightful holder in possession”**. We were able to read the text¹ as passed along with amendments² formalized in the Justice Committee of the Chamber of Deputies. We understand that the text could complete its first reading by the end of 2023.

This proposal introduces a new offense in the Criminal Code, and provides for accelerated proceedings for evictions of irregularly occupied property, with immediate arrest of the offender. The draft law foresees that persons committing arbitrary occupation of property can be punished with a prison term between 2 and 7 years, which can be reduced if the occupant cooperates with the prosecuting authority. Additionally, it foresees the disconnection of utilities for persons living in irregularly in occupied properties within 15 days upon a simple complaint by the owner. Should the law be adopted with the proposed amendments, it could lead to the criminalization of certain persons in precarious situations, and reduce procedural guarantees to protect the occupants of a dwelling from being pushed into homelessness.

The changes introduced in the draft law No. 566 aimed at protecting the legal owners against illegal occupation could result in violations of the International Covenant on Economic, Social and Cultural Rights, ratified by Italy in 1978, as well as the International Covenant on Civil and Political Rights, ratified in the same year. The following points deserve particular attention.

¹ Proposal No. 566, presented on 14 November 2022, https://www.camera.it/leg19/995?sezione=documenti&tipoDoc=lavori_testo_pdl&idLegislatura=19&codice=leg.19.pdl.camera.566.19PDL0010730&back_to=

² List of amendments published on 4 July 2023, relative to the proposal No. 566, <https://documenti.camera.it/apps/emendamenti/getProposteEmendative.aspx?contenitorePortante=leg.19.eme.ac.566&tipoSeduta=1&sedeEsame=referente&urnTestoRiferimento=urn:leg:19:566:null:null:com:02:referente&tipoListaEmendamenti=1>

1. *Criminalizing the arbitrary occupation of property*

Article 1 of the aforementioned draft law No. 566, along with the amendments presented, has profoundly altered its original structure and content. In particular, the amendments foresee:

- An extension of the scope of the law: The law would not only criminalize any individual who, “through violence, artifice or deception takes possession, occupies or defends (...) property destined for the domicile of others”. It would also define as a criminal offence the arbitrary occupation of “property owned by others”, thus including also properties for non-residential purposes. Arbitrary occupation of land and properties seems currently already be regulated by two specific provisions of the Italian Criminal Code: Article 614 and Article 633. Article 614 classifies as criminal conduct entering another person’s dwelling, private property, or land against his or her will, subjecting it to a punishment by imprisonment from one to four years. Article 633 prescribes that anyone who arbitrarily encroaches on other people’s land or buildings, whether public or private, in order to occupy them or otherwise profit from them, shall be punished, on complaint by the alleged victim of the offence, by imprisonment for a term of one to three years and a fine ranging from 103 to 1,032 euros. The draft law would seriously raise the prison term for arbitrary occupation of property. It should be noted in this context that the Italian criminal law foresees the possibility to convert a prison term into a fine only for sentences that are under one year.

- The proposed draft law will not only criminalize persons who take possession, occupy, or defend properties, but also persons who live in a property “without lawful title”.

- The sentencing prescribed by the new proposed law would increase the punishment to two to seven years of imprisonment and also allow for the immediate arrest of persons occupying arbitrarily property by the police if the person is caught in *flagrante delicto* (Article 3 of the proposal). According to Article 1, paragraph 3 of the proposed law, if the occupier “collaborates in asserting the facts, does not oppose resistance and voluntarily leaves the property, the detention period is reduced by one-third to one-half”. Still, even in this case, the offender may be sentenced to jail.

As stated in the proposal, the legal reforms have been presented as a way to guarantee the inviolability of domicile and reinforce the rights of homeowners, with a view to reducing the lengthy eviction procedures and to facilitating re-establishing the legitimate possession of property. It is also specified that the proposed law has been introduced with the aim, among other things, of protecting all types of private and public property from being illegally occupied by individuals or criminal organizations.

The proposed law with its amendments, would apply not only to the limited category of occupations of housing where a person is domiciled, but temporarily absent, but also to the situations where abandoned properties are occupied without title. The law would apply both to private and public properties. It would include persons staying in rented housing after a rental agreement has ended, persons in situations of homelessness who have no access to adequate housing and are living in abandoned properties, or persons residing in informal encampments and settlements. The proposed

amendment to Article 1 seems to fail to distinguish between irregular occupation caused by a state of necessity (resulting from the corresponding failure of the State to provide access to everyone present in its territory to adequate housing that is affordable, habitable and provides safety, privacy and protection from the elements of nature), on the one hand, and illegal occupation of property, land and housing occupied by organized criminal groups, on the other hand. It therefore appears to us that the changes introduced might affect various vulnerable categories, notably:

- Occupants who are unable to provide a valid contract: these include tenants holding a verbal lease, people benefitting from unauthorized subletting, people who occupy a dwelling in exchange for services, people accommodated without a contract, or victims of a false lease.

- Persons who are occupying a property without a title of housing (squatters) because they do not have access to any adequate housing that would be affordable to them.

- Households that are unable to pay rent and do not comply with an enforceable eviction order. This category represents the vast majority of those subjected to evictions (84% between 2002 and 2021 according to data from the Ministry of Interior).³

The harsh punishment suggested by the draft law (a prison term of between 2 to 7 years) appears disproportionate and may thus be inconsistent with international human rights law. For the same reasons, it is also highly questionable under the principles of national criminal law: the Italian Constitutional Court has ruled in its case 236/2016⁴ that the intensity of the danger or injury caused to the protected legal asset should be assessed and the punishment must be proportionate to the disvalue of the unlawful act committed.

In this context, we would remind the Parliament and the Government of Italy of its obligations under Article 9 of the International Covenant on Civil and Political Rights (ICCPR) and Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Imposing criminal sanctions that foresee prison terms of 2 to 7 years, encroach on the human right to liberty and security of the person set out in Article 9 of the ICCPR. While this right may be subject to lawful limitations, any detention even if based on national law and adopted by Parliament must correspond to the core elements of reasonableness, necessity, and proportionality (see Human Rights Committee, General Comment No. 35, para 12.). In addition, the Human Rights Council has called upon States in its resolution 43/14 to “take all measures necessary to eliminate legislation that criminalizes homelessness.” It would in our view be clearly disproportionate to subject a person or household who may stay on properties because they are unable to access any alternative housing, or who remain in housing after receiving an eviction order, to a criminal sanction involving incarceration. It would mean that a State that fails to guarantee the right to adequate housing set out in

³ Ministero dell’Interno, Ufficio Centrale di Statistica, https://ucs.interno.gov.it/ucs/contenuti/Andamento_delle_procedure_di_rilascio_di_immobili_ad_uso_abitativo-168224.htm

⁴ Italian Constitutional Court, Sentence 236/2016, <https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2016&numero=236>

Article 11 of ICESCR to the concerned individual, would in addition impose a criminal sanction on the same victim, resulting in a second human rights violation, namely the arbitrary deprivation of his or her right to liberty. In our view the proposed text is not specific enough, allowing for the arrest of any person caught in *flagrante delicto*, without considering that such persons may be in a vulnerable situation, and may only be in breach of the law due to lack of housing alternatives and to the risk of homelessness.

The failure (in the amendments to Article 1) to clearly distinguish between different instances of occupation without title would appear difficult to reconcile with the position of the Committee on Economic, Social and Cultural Rights, according to which States parties to the International Covenant on Economic, Social and Cultural Rights “must give due priority to social groups living in disadvantaged conditions and pay special attention to them. Policies and legislation should not, in this context, be designed to benefit already advantaged social groups at the expense of other social strata” (General Comment No. 4 (1991) on the right to adequate housing, para. 11). While the realization of the right to housing must take into account the financial resources of State parties, the Committee on Economic, Social and Cultural Rights has noted that “any deliberately retrogressive measures [which would impact the realization of the rights of the pact] would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources” (General Comment No. 3, para.9).

To our understanding, the Italian Criminal Code already regulates under Article 633 the encroachment on land or buildings. This provision seems sufficient to properly sanction crime-run occupations, while situations of a different nature should be resolved by other appropriate means without resorting to criminal law. What must be avoided by all means is to subject persons who have no access to any adequate housing alternatives to harsh criminal sanctions, in particular in the case that the State or the competent local Government has failed to uphold its obligation to ensure that everyone has access to adequate housing in its jurisdiction, as set out in General Comment No. 4 of the CESCR.

We would hence recommend that draft law No. 566 should not be adopted without such adoption being preceded by a detailed legal assessment, particularly to ensure that occupations stemming from vulnerable and fragile situations, including families with minors, are clearly distinguished from organized-crime-led occupations. This would entail a more precise analysis of the current situation of occupied properties in the country and why this occurs, as well as of the potential adverse consequences that the legislative reform may have on certain groups impacted. This should be done to avoid a potential criminalization of persons in situations of vulnerability or homelessness and ensure that the proposed provisions are compatible with the human rights obligations that derive from Article 9 of the International Covenant on Civil and Political Rights and Article 11 of the International Covenant on Economic, Social and Cultural Rights.

2. Interrupting the supply of utilities

An amendment proposed adds a provision (Art. 1bis) that requires the disconnection of utilities (water, electricity, gas, heating) “within 15 days” upon simple complaint from the owner, with only the need for the favorable opinion of the Public Prosecutor’s Office. This amendment does not foresee a ruling of the judicial authority and does not envisage the possibility of challenging the decision by the alleged illegitimate occupant or holder.

This measure constitutes a tightening of a pre-existing law that specifies that occupants without a lawful title cannot take up legal residence in the occupied property, and are not entitled to request public services (electricity, gas, water, landline telephone) (Lupi law, L. 47 of 2014, in art. 5).

With such an amendment, the law would not take into account the possible presence in the household of minors, sick people and other persons in situations of vulnerability. As clarified in the Guidelines on the realization of the right to adequate housing (A/HRC/43/43, para. 16 (b)), the right to housing should be defined as the right to live in a home in peace, security and dignity, and include security of tenure, and availability of services. General Comment No. 4 (8) on Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights further clarifies that the right to adequate housing entails access to certain facilities essential for health, security, comfort, and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to safe drinking water, energy for cooking, heating and lighting sanitation and washing facilities. We wish to draw attention to General Comment No. 15 on the right to water of the Committee on Economic, Social and Cultural Rights, that specifies that “the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use”. Water for domestic use must also be economically accessible and individuals should be protected from arbitrary disconnection of such supply.

In our view, adopting this provision without safeguards that would protect against arbitrary service disconnection, for example caused only by unaffordability of such services for the concerned individuals, would not be in conformity with international human rights law.

We would hence recommend that draft law No. 566, would at least need to require the Public Prosecutor first to assess whether any disconnection of services would cause any harm to the concerned individuals who may not be able to have access to such services anymore due to lack of housing alternatives or inability to pay such services, before authorizing any such disconnections. In addition, the affected individuals should have access to judicial remedies against any decisions taken by the Public Prosecutor’s office.

3. Accelerating eviction judgments and increasing the discretion of the judicial police

As per Article 4 of the proposed law, “Officers and agents of the Judicial Police (*Polizia giudiziaria*) who receive a complaint of the crime of arbitrary occupation of property intended as someone else’s domicile, [...] shall go, without delay and in any

case within twenty-four hours following the complaint, [...] in order to proceed to the identification of the occupants, the ascertainment of any titles justifying the possession of the property and the verification of the state of the places”.

Article 6 provides that after having verified the arbitrary occupation, the judicial police orders the immediate release of the property, which in case of resistance by the occupier, is carried out by force.

The proposed law would thus authorize the judicial police, but not independent judicial bodies, to carry out forced evictions with the use of force, only establishing *a posteriori* the possibility that judicial bodies ascertain whether such evictions have been justifiable. The proposed draft law would reduce and undermine the procedural guarantees, aimed at ensuring that evictions are carried out in compliance with international human rights standards. The forced evictions authorized by Article 6 would not only violate Article 11 of the ICESCR but could potentially result as well in violations of Article 17 of the International Covenant on Civil and Political Rights, which states that “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence”. For an eviction to be justified as proportionate to the purpose pursued, it must be subject to the supervision of a judicial body with guarantees of independence and impartiality before it is carried out.

In its General Comment No. 7, the Committee on Economic, Social and Cultural Rights clarified 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 (see para. 11 of General Comment No. 7). Under no circumstances should evictions 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 the affected individuals, where they are unable to provide for themselves.

We wish to underscore that, notwithstanding the type of tenure, all persons should possess a degree of security of tenure, which guarantees legal protection against forced eviction, harassment, and other threats. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected (Committee on Economic, Social and Cultural Rights, General Comment No. 7, para 15).

The proposed law does not foresee the provision of an adequate housing alternative for the individuals evicted.

We wish to recall that Italy has to guarantee that housing is affordable to all. In this respect, the Committee on Economic, Social and Cultural Rights has clarified that “Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs” (General Comment

No. 4 (1991) on the right to adequate housing, para 8, c). The Special Rapporteur on the right to adequate housing has in his most recent report elaborated further on the obligations of States to ensure that everyone has access to housing that is not only adequate, but also affordable (A/78/192). It would therefore not be acceptable that forced evictions are carried out under an accelerated procedure if there is no legal guarantee that those affected have been offered or assisted in accessing housing that meets basic adequacy standards and is affordable before carrying out any such eviction.

For all these reasons, we recommend to the Parliament and to the Government to reexamine draft law No. 566 and proposed amendments aimed at protecting property against illegal occupation, to ensure that the proposed reform will be in full conformity with Italy's international obligations as set out above. Under no circumstances should a person threatened with an eviction be rendered homeless or deprived of access to effective remedies to verify that such an eviction is in compliance with national law and international treaties to which Italy is a party. Any amendment to the criminal law should not result in the deprivation of liberty of persons who may reside without a legal title in properties or on land, for the sole reason that they lack affordable access to any alternative housing or land. The reforms under consideration should not have the unintended impact of punishing the poor or homeless for being poor and homeless and lacking the financial resources to access adequate housing with a legal title to occupy it. Instead, efforts should be concentrated to ensure that the concerned individual or households have access to adequate housing that is affordable and provides legal security of tenure as required under Article 11 of the ICESCR.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify matters brought to our attention, we would kindly request your Excellency's Government that this communication is shared as well with members of the Chamber of Deputies and of the Senate. We 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 comment to the proposed law.
2. Please provide any additional information on the potential impact that the proposed law might have on certain vulnerable groups, such as persons experiencing homelessness or extreme poverty, migrants, or minorities such as Roma communities.
3. Please explain what measures have been taken to ensure access to adequate alternative housing, in particular for persons living in properties or on land without a formal legal title.
4. Please also indicate what measures have been taken to prevent evictions caused by the inability to cover housing costs for persons and households experiencing economic hardships.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. 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 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

Olivier De Schutter
Special Rapporteur on extreme poverty and human rights