

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; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on minority issues

REFERENCE: UA
KGZ 2/2016:

24 June 2016

Dear Mr. Mukashev,

We have the honour to address you in our 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; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 31/9, 25/18 and 25/5.

In this connection, we would like to bring to the attention of your Government information we have received concerning the **alleged forced evictions and demolition of 36 houses (approximately 152 individuals) belonging to the Uzbek ethnic minority, residing on Lenin Street in the city of Jalal-Abad without any alternative housing solution, as well as threats against human rights lawyers of Spravedlivost in retaliation for providing legal advice to the affected individuals.**

Spravedlivost is a non-profit, non-governmental organisation that aims to promote the rule of law and human rights, and combats torture through legal assistance. As a member of the Coalition Against Torture in Kyrgyzstan, Spravedlivost prepares reports regarding the implementation by the Kyrgyz Republic of its obligations under international human rights law. Spravedlivost was named as the 2014 winner of the Max van der Stoel Award, for its work in promoting and protecting the rights of national and ethnic minorities. Spravedlivost was the subject of a previous communication on 10 September 2014 (see case No: UA KGZ 4/2014).

According to the information received:

In January 2016, the Municipality of the city of Jalal-Abad decided to forcibly seize land plots of residents of Lenin Street as a result of changes made to the General City Plan in 2011, which allegedly includes the expansion of the central Lenin Street. The General City Plan of 2011 remains confidential. In that regard, on 16 January 2016, a written notice of the expropriation was sent by the Municipal Management Committee of the Mayor's Office to the residents which included a value assessment and compensation price for the plots of land.

All Lenin Street homeowners reportedly initially opposed the 1000 KGZ (15 US Dollars) per square metre proposal because the compensation price was considerably lower than the market value for the plots of land. Nonetheless on 16 May 2016, the Municipal Property Management Committee of the Mayor's Office sent a second written notice concerning the imminent seizure of the plots to residents. Soon after, on 30 May, 2016, 25 letters opposing the proposal were submitted to the Municipality by Spravedlivosts on behalf of the owners. Some law enforcement officials had allegedly visited a number of residents in the meantime to persuade them to sign the agreement. Those who signed the agreement received compensation of 1000 KGZ per square meter.

The two written notices sent to the residents did not indicate any timeframe by which the residents had to voluntarily relocate, nor did it include any alternative housing solutions for the affected residents.

According to article 233-17 of the Civil Code and article 68 of the Land Code of the Kyrgyz Republic, there are two options through which a plot of land can be acquired for public use. The first option is through a court decision and the second option is that an authorized public authority, for example, the Mayor who can buyout the land and property from private individuals provided that both parties reach an agreement regarding the compensation price. In the event of a disagreement, the public authority can refer the matter to the Court within two months of receiving the refusal.

On 2 June 2016, the Mayor's office through a construction company began to demolish fences, buildings and houses of the residents in order to expand Lenin Street without a court order.

The Municipality also tried to seize additional plots on Lenin street where shops and businesses reportedly owned by ethnic Kyrgyz are located to complete the expansion of the street, but has yet to carry out the eviction process. As a result, the road is now larger where the demolitions have taken place and gets narrow again where the shops are still standing. Most of the 36 Uzbek households of Lenin Street, whose houses have been completely demolished, have relocated to other parts of the city to live with relatives. Others, whose houses were partially demolished, continue to live in that environment.

In addition, lawyers from Spravedlivost Jalal-Abad Regional Commission, who were monitoring the demolition process, received threats from officers of the National Security Committee for allegedly inciting the residents of Lenin Street to disobey the decisions of the municipality on the day of the demolition. Additional threats were made in the Jalal-Abad Mayor's Office, when the lawyers were meeting with the Head of the Municipal Property Management Committee

Department. The officers of the National Security Committee interrupted the meeting and asked the lawyers why they were interfering with this issue and who were their donors. Since then, Spravedlivost has reportedly been stigmatized in the media for its activities in connection with the expansion of Lenin Street.

While we do not wish to prejudge the accuracy of these allegations, we wish to express serious concern about the forced eviction of the residents of Lenin Street from their homes and plots of land, and subsequent complete or partial demolition of their houses, without any viable resettlement or alternative accommodation proposed by the relevant city authorities or the Government. We stress that these actions are contrary to your Government's obligation to respect, protect and fulfil the right to an adequate standard of living, including housing, as well as the right to non-discrimination and the right to freedom from arbitrary or unlawful interference with one's privacy, family and home, as enshrined in articles 2 and 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and articles 2 and 17 of the International Covenant on Civil and Political Rights (ICCPR), both ratified by Kyrgyzstan on 7 October 1994.

We also wish to express grave concern at the intimidation and threats against human rights lawyers of the Spravedlivost, which appear to be in direct retaliation for their peaceful and legitimate human rights activities and to dissuade them from carrying out their work in the promotion and protection of economic, social and cultural rights.

We also wish to express concern that, according to information received, the evictions and demolition of property thus far has only affected Uzbek minority citizens, which may indicate a discriminatory impact of the actions taken by the city authorities, whether intentional or not. In this connection, we draw your attention to the "Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities". In particular article 4(1) of the Declaration requires governments to take measures to ensure that minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

We further recall General Comments No. 4 and 7 of the Committee on Economic Social and Cultural Rights, which stress the need to provide adequate legal protection from forced eviction, including access to an effective remedy of those that are affected by eviction orders. According to these General Comments, evictions can only be carried out lawfully, under exceptional circumstances, and in full compliance with the relevant provisions of international human rights law, which implies that prior to carrying out any evictions, Kyrgyzstan must further explore all feasible alternatives to forced eviction in consultation with the affected persons, that adequate alternative housing facilities are provided to avoid homelessness, and that due process is ensured. We also recall the Special Rapporteur on adequate housing's report on the obligations of subnational and

local governments in the implementation of the right to adequate housing (A/HRC/28/62).

In addition, we would like to recall articles 1, 2, and 12 of the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international level; that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms; and that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. Furthermore, Human Rights Council resolution 22/6 states that domestic law should create a safe and enabling environment for the work of human rights defenders (PPs 10-13); and resolution 31/32 of the Human Right Council calls on States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards the realization of economic, social and cultural rights (OP-2).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

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

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide further information and details about the jurisdiction and the legislation that could serve as basis for the eviction and demolitions.
3. Please indicate if all feasible alternatives to eviction have been explored in consultation with the residents of Lenin Street and if so, please provide details as to why proposed alternatives to the eviction have been deemed unsuitable.
4. Please provide a copy of the General City Plan of Jalal-Abad- alledgedly approved in 2011. In relation to it, please indicate in detail what measures

have been taken by the municipal or national government to ensure that any changes to the General City Plan in 2011 do not have any direct or indirect discriminatory effects on minority groups, in particular ethnic Uzbeks.

5. Please indicate what measures have been taken by the City of Jalal-Abad to address the lack of adequate housing alternatives for the Uzbek minority. Please provide details of the specific policies and programmes in place or being planned in this regard.
6. Please indicate whether the residents of Lenin Street have access to any complaints mechanisms to formally assert their right to housing and to non-discrimination to challenge the eviction. If so, please provide details.
7. Please indicate what measures have been taken to ensure that human rights defenders in Kyrgyzstan, including human rights lawyers, are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation, harassment and stigma of any sort.

While awaiting a reply within 30 days, we urge that all necessary interim measures be taken to safeguard the rights of the 36 households residing on Lenin Street in the City of Jalal-Abad in compliance with the above international instruments.

Your Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Mr. Mukashev, the assurances of our 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

Michel Forst

Special Rapporteur on the situation of human rights defenders

Rita Izsák-Ndiaye

Special Rapporteur on minority issues