

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 IND 14/2020

17 September 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 **imminent threat of forced eviction of more than 250.000 persons living in 48.000 low-income households along railway tracks in Delhi/India after a ruling of the Indian Supreme Court from 31 August 2020, in which they were not a party and seemed to have been given no opportunity to be heard. The ruling seems to have been issued without any consultation and resettlement plan in place and prevents affected individuals from approaching any court for remedy. Of additional concern is that such a forced eviction would take place during the COVID-19 pandemic and thus expose several hundred thousand people at elevated risk to their health and life.**

According to information received, for many years an estimated population of over 250.000 people have lived in around 48.000 dwellings that have been erected along railway tracks on lands officially owned by the Indian Railways. According to Indian Railways some of these informally erected houses are also located in the official safety zone.

On 31 August 2020, the Supreme Court of India passed a ruling in a case related to environmental pollution and waste management along railway tracks (*M.C. Mehta vs. Union of India and others*, Writ petition No. 13029/1985), not only ordering the implementation of a waste collection policy, but declaring that "a comprehensive plan for the removal of *jhuggies* [informal houses] be made and executed in a phased manner. The encroachments [meant are the informally erected homes] which are in the safety zone should be removed within a period of three months and no interference, political and otherwise, should be there and no Court shall grant any stay with removal of the encroachments in the area in question. In case any interim order is granted with respect to the encroachments, which have been made along with railway tracks that shall not be effective."

Reportedly, residents living in the safety zone or on Indian Railways grounds were not party to the environmental pollution and waste management case before the Supreme Court and at no stage of its proceedings heard.

The ruling of the Supreme Court did not include any rationale for the order against the residents on environmental or other grounds, an estimation of the affected number of residents living in the safety zone or on railway grounds, details concerning consultation with affected households, the requirement to develop a resettlement or relocation plan or to which new location affected households should be relocated and what alternative accommodation would be made available to them at the relocation site.

The Court did not discuss any applicable national or international law concerning such a large scale resettlement nor made any references to its previous landmark human rights jurisprudence or that of the Delhi High Court, including *Olga Tellis v. Bombay Municipal Corporation* (1985), *Sudama Singh v. Government of Delhi* (2010) and *Ajay Maken v. Union of India* (2019), which recognized the right to housing and shelter and called for adequate rehabilitation and other due process requirements before undertaking any eviction, including on railway land. The ruling in question appears to have also ignored established protections for residents under the Delhi Urban Shelter Board (DUSIB) policy on relief and rehabilitation (2015).

It should be noted that the ruling does not discuss how affected homes could be removed without putting the residents living in these homes as well as the surrounding community at elevated health and mortality risk during the COVID-19 pandemic.

Subsequently, many local human rights organizations, as well as the Government of Delhi, have asked for an extension of the time period for implementation of the order and also for adequate consultation and rehabilitation, in accordance with previous orders of the High Court of Delhi, before anyone is removed. In response to a petition submitted by a resident affected by the judicial ruling and a member of the Congress party, another bench of the Supreme Court affirmed on 14 September 2020, the statement of the Solicitor General of India that there will not be any eviction for 4 weeks until the Central Government consults with the Delhi Government.

The Indian Railways which had started threatening communities living on Railway land by asking them to vacate their homes within 14 days, has now taken note of the new ruling providing a temporary reprieve from the eviction order.

Without prejudging the accuracy of the information received, I express my grave concern at the planned eviction affecting 48,000 households living along railway tracks in Delhi. In the initial judicial ruling, no plea was made and no finding recorded, that the households in question are responsible for the environmental pollution along railway tracks. While it may be unavoidable to relocate some of the residents living in very close proximity to the tracks for other reasons such as safety, any eviction has to comply with procedural requirements and safeguards for the

affected residents in order to be consistent with international human rights standards applicable to evictions. These include the requirement of meaningful consultation with the affected residents including on possible options for relocation; the establishment of a resettlement plan in participation with the affected persons; a reasonably long and adequate notice to facilitate voluntary resettlement; the provision of alternative land or housing that should provide long term security of tenure for the relocated persons and adequate and fair compensation for job and economic losses. Any eviction failing such procedural requirements and safeguards would constitute a forced eviction and amount to a grave violation of the right to adequate housing and other human rights.

According to the facts reported to me, the ruling of the Supreme Court from 31 August 2020 requiring an eviction within three months fails to address several of the most basic procedural requirements under international human rights law. First, the ruling of the Supreme Court was passed without any meaningful participation or consultation. According to information received, the residents of the dwellings along the railway tracks, were not parties to or even heard during the case before the Supreme Court. Second, the Court appears not to have studied any relocation and resettlement plans, which appear to be absent. Even if such plans are available, the Court appears not to have analysed their feasibility or conformity with national or international law. For example, no indication is provided in the ruling to which location the residents living currently on railway grounds will be relocated and its suitability, nor does the ruling specify what alternative accommodation will be provided at the relocation site. There is no discussion of whether alternative housing available to those relocated would be affordable or suitable, and what public services would be available at the relocation site. Nor is there any indication of whether residents living currently on the grounds of the Indian railways are expected to re-establish their own housing on a relocation site or will be provided any other assistance. The ruling bars affected individuals from approaching any court for remedy, which is a blatant violation of the right to remedy under international law.

Even if any plan for relocation is now established after the court order, it is difficult to believe that any fair and effective plan could be developed and implemented in consultation with the affected persons within three months, taking into consideration that several thousands of households are affected.

The temporary four week reprieve resulting from the order of the Supreme Court on 14 September 2020 is welcome, but not adequate as it leaves the prospect of mass eviction in place.

I have therefore justified reason to fear that several thousands of persons would be evicted into homelessness if any evictions or housing demolitions are carried out before or after the four month reprieve. I would like to recall that eviction into homelessness would in itself be another serious breach of international human rights law.

Furthermore, in the current context of the COVID-19 pandemic, there are serious concerns that the evictions could contribute to spreading COVID-19 and thus severely affect the rights to life and health of the concerned families and the surrounding communities. As expressed in my press release of 18 August 2020, I urge your Excellency's Government to establish an immediate moratorium on all evictions for the duration of the crisis¹, taking also into account the obligation to protect the health and safety of everyone in India under the National Disaster Management Act and the Epidemics Act, both of which are in effect in India during the pandemic. The measures recommended by WHO in relation to the COVID-19 pandemic, such as self-isolation, hand-washing, physical distancing and avoiding unnecessary movements, are clearly incompatible with evictions, and such evictions in the current context can amount to "a potential death sentence". In line with the "COVID-19 Guidance Note: Prohibition of evictions" issued on 28 April 2020 by my predecessor, Leilani Farha, I urge your Excellency's Government to "declare an end to all evictions of anyone, anywhere for any reason until the end of the pandemic and for a reasonable period of time thereafter".²

During the current COVID-19 pandemic, I can only imagine some very few exceptional circumstances in which an eviction may be justifiable under international human rights law. There would have to be an immediate, high probable and more serious threats to the life of a person caused by another circumstance that would justify a relocation to avoid any danger to the life or threat of the person – in other words, relocations to save the lives of the people being relocated in the context of life threatening natural disasters, a high risk of housing collapse or other another serious life threatening safety issues relating to the close proximity of a dwelling to a railway track. However, even in such cases, all threats to the health and life of the residents living in the safety zone should be considered, including their probability and the potential threat of having no adequate place to stay to shelter against the virus or other elements of nature. A relocation may be compliable with international law standards only if it can be assured that the affected persons will, through relocation to a new site and accommodation, be better protected against both fatal railway accidents, COVID-19 and other life threatening risks. In addition, it must be assured that after relocation all their human rights, including their right to housing, health, food, water, sanitation and work will remain protected without any retrogression.

Having a place to live in, having access to water and sanitation, and being sheltered against heat, cold and rain are core elements of the right to adequate housing and essential preconditions to remain in good health and to be protected from threats to life. Thus, forced evictions do not only violate the right to adequate housing, but often the rights to health and life and other rights under international human rights law.

I am concerned that the Supreme Court has not considered any national or state law, policy or jurisprudence governing shelter, housing or evictions which point

¹ See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26170&LangID=E>

² See https://www.ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_guidance_evictions.pdf

in the opposite direction to what the court has decided. The Court ruling does therefore appear also to raise concerns in relation to compliance with India's own policies and its own past jurisprudence, cited above, that has recognized the right to adequate housing in the context of evictions. India's Supreme Court has a well-earned reputation as a champion of human rights through several important rulings published over the years. It is therefore a matter of surprise to see a ruling such as the one published on 31 August 2020.

I wish to remind your Excellency's Government that in accordance with article 11 of the International Covenant on Economic, Social and Cultural Rights, to which India is a State Party, India is under an obligation to respect, protect and fulfil the right to adequate housing. As enunciated 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.³ I also wish to call your attention to the Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18, Annex 1) and the Guidelines for the Implementation of the right to adequate housing (A/HRC/43/43) which provides guidance on the States' obligations before, during and after resorting to any evictions.

India is furthermore obliged to realize the right to adequate housing and other social, economic, cultural rights progressively without any retrogression.⁴ Thus, any relocation or eviction that would result in less favourable housing conditions for those affected or infringe the enjoyment of other social, economic rights would not be compatible with article 2.1 of the International Covenant on Economic, Social and Cultural Rights.

Any person under threat of eviction needs furthermore to have an effective judicial remedy against such evictions. In this context I would like to recall articles 2.3 and 17 of the International Covenant on Civil and Political Rights and General Comment no. 7, para 13, and General Comment no.9 of the Committee on Economic, Social and Cultural Rights (E/C.12/1998/24).

Furthermore, security of tenure is an essential element of the right to adequate housing, which guarantees that people can access and enjoy their home without fear of forced evictions and provides a foundation for the enjoyment of all aspects of the right to adequate housing and other human rights.⁵ As highlighted by my predecessor, Raquel Rolnik, the legal recognition of the possessory rights of those occupying land and housing for a prescribed period is "an important measure to ensure that land and

³ See 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.

⁴ See Committee on Economic, Social and Cultural Rights, General comment No. 3, para 9,

⁵ See Guiding Principles on security of tenure for the urban poor (2014). A/HRC/25/54, para. 6.

housing is being used in the most socially productive manner and to fulfil the right to adequate housing for all”.⁶

Paragraph 15 of the General Comment No.7 of the Committee on Economic, Social and Cultural Rights further 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.

Finally, I would like to draw your attention to the findings and recommendations by my predecessor who conducted an official country visit to India in April 2016. In her report to the Human Rights Council, Leilani Farha, noted that forced evictions, displacements and demolitions are not uncommon practices and that recourse to eviction is extensive and that such forced evictions are commonly carried out of the most vulnerable populations. She furthermore expressed concern “that genuine consultation with those affected is seldom carried out”, “that access to legal remedies for forced evictions appears to be scant in India”, and that “in most cases, forced evictions occur without a hearing and with impunity.” (A/HRC/43/51/Add.1, para. 41-46). The report also noted that “there is no clear national policy or legislation on due process requirements prior to eviction, which are required under international human rights law.”(Ibid, para. 76), but made positive reference to several Supreme Court decisions that have affirmed the right to housing.

In her report, the Special Rapporteur recommended to India inter alia to institute a national moratorium on forced evictions and demolitions of homes and to enact legislation to guide forced evictions that stipulates that forced evictions can only occur in the most exceptional of circumstances, once all other alternatives have been pursued, in strict compliance with international human rights law and clearly specified that when evictions are required as a result of valid health and safety risks, governments must ensure that resettlement takes place in a time-bound manner, ensuring meaningful consultation with those who are directly affected, that fair compensation is awarded and that resettlement housing is adequate, as prescribed by international human rights law (A/HRC/43/51/Add.1, para 85 c). She also urged India to survey and provide legal recognition of all existing informal settlements and prioritize in-situ upgrading and rehabilitation, with secure tenure for all inhabitants, based on meaningful consultation (Ibid., para 85 d).

Given the urgency of the situation of persons at risk of eviction, I call upon your Excellency’s Government to urgently request the Supreme Court when it reconvenes on the matter, to reconsider its earlier order, in order to halt any evictions beyond the temporary 4-week reprieve. I furthermore urge your Excellency’s

⁶ Ibid, para. 11.

Government to impose a moratorium on evictions during the pandemic under the National Disaster Management Act and the Epidemics Act. If relocation of residents is necessary for safety reasons, I call upon the Government to ensure that it happens after the pandemic is under control, and that the legal rights to participation, consultation and remedy of the affected persons are fully respected, before any relocation plan is finalized and executed. I furthermore urge your Excellency's Government to identify permanent solutions to fulfil the housing needs of the persons living currently on Indian Railways grounds, including through regularization of such dwellings to ensure security of tenure in the long term in accordance with state and national policy and law. I furthermore call upon the Government to develop a Plan of Action for dealing with urban waste disposal and pollution in Delhi which does not involve the mass forced eviction and displacement of hundreds and thousands of people.

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, I would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is my responsibility, under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our 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 concerns.
2. Please provide information about whether your Excellency's Government will make a request to the Supreme Court to impose a moratorium on evictions during the pandemic under the National Disaster Management Act and the Epidemics Act, and if not please provide reasons why not. Please provide and also seek a reasoned analysis from the Court about relevant Indian and international jurisprudence on shelter, housing rights and evictions.
3. Please provide detailed information on the housing conditions of the persons living along railway tracks in Delhi on grounds of the Indian Railways, disaggregated by gender, age, disability, socioeconomic status and other indicators and the exact numbers of persons living in the safety zone and the number of persons living outside of the safety zone. Please provide as well information on access to safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage, access to emergency services, access to education and health care for the residents living in these settlements. Please elaborate on any measures taken by the federal, state-level or local governments or the Indian

Railways to improve the living conditions of those living in these informal settlements.

4. In the event that evictions do proceed, despite the reasons stated above, please provide information on whether all feasible alternatives to relocation, such as in-situ rehabilitation have been considered either for some or all people living in informal settlements along the railway lines, in particular for households living outside the safety zone. If alternatives to eviction and relocation 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 to the eviction and relocation were not explored.
5. If any in-situ rehabilitation plans have been developed, in accordance with the DUSIB 2015 policy, could you kindly share a copy of them and provide information to what extent the affected population has been consulted or participated in the development of such rehabilitation plans.
6. Please share information whether any relocation plan was developed or considered for some or all persons living along the railway lines and kindly share a copy of any such plan. Please provide detailed information to what extent the affected population or representatives of the residents living in the settlements along the railway lines have been consulted and participated in the design of any such plans.
7. Please elaborate on the applicable procedural guarantees provided to persons living in human settlements along the Indian Railway lines, including whether the affected persons threatened by eviction have access to effective legal remedies and if any such remedies were sought before national courts or other bodies and institutions and their outcomes.
8. Please elaborate whether any specific actions will be taken to protect the persons living in human settlements along the Indian railway lines in relation to health risk in the context of the COVID-19 pandemic according to India's national laws in force during the pandemic and whether any considerations will be given to suspend or stop any evictions during the pandemic in India, as I have requested.
9. Please describe what concrete housing alternatives are currently available to the families subject to the eviction order to ensure that no one remains homeless or lives in substandard conditions as a result of the eviction.

10. Please provide information on any measures adopted to ensure security of tenure for the residents living along the railway lines for in situ regularization or at a planned site of relocation.
11. Please provide a detailed update on the implementation of the recommendations made in paragraph 85 c)-f) of the country visit report on India to the Human Rights Council by my predecessor (A/HRC/34/51/Add.1) both by the Federal Government and by the Government of State of Delhi.

While awaiting a reply, I urge that all necessary interim measures be taken to prevent the alleged violations.

I would also like to inform you that I intend to publicly express my concerns in the near future as, in my view, the information received is sufficiently urgent and reliable to indicate a matter warranting public attention. I 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 issues in question.

I furthermore kindly request your Excellency, to share a copy of this letter with the honourable judges of the Indian Supreme Court and its registrar. Please be also assured that - subject to availability of resources - I stand available to provide technical advice to the Indian Government with the view to ensure better compliance of any measures with international human rights norms. In addition, I would like to indicate that I am available to provide my views in my capacity as an independent expert appointed by the United Nations Human Rights Council on the above mentioned matter before the Supreme Court of India upon request of a litigating party or by the Court itself.

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