

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 OTH 53/2019

25 November 2019

Dear Mr. Thiam,

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 34/9.

As an independent human rights expert appointed and mandated by the United Nations Human Rights Council to report and advise on the human right to adequate housing, I am sending to you this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information I have received.¹ Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the concerns, the applicable international human rights norms and standards, and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, I would like to bring to your attention information I have received concerning the adverse human rights impacts that may be caused by **the intended demolition of the Brunaupark housing complex in Zürich, owned by the Credit Suisse Pension Fund, which has reportedly been planned without transparency or consultation with affected residents, and which is to lead to their eviction from their homes, without any offer for adequate compensation or proximate relocation. I am also concerned about similar threats to the affordability of housing for tenants living in housing units owned by a Credit Suisse real estate investment fund in Schorenweg in Bale.**

According to the information received:

The development of Brunaupark

¹ Further information about the communication procedure is available at:
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

In 1970 the pension fund of Credit Suisse, purchased 10 hectares of land in the Wiedikon area in order to construct an administrative headquarters for its business activities. According to a zoning agreement concluded between Credit Suisse and Zürich City Council, in 1973, Credit Suisse was obliged to assign 37.5 % of the office space to be constructed to housing. 15 % of this residential share is designated for commercial use, for businesses such as pharmacies and supermarkets. The complex was constructed in four stages (1980, 1983, 1993 and 1996), with the housing completed being subject to affordable rent for a period of 30 years after construction. The first two of these affordable rent periods expired in 2010 and 2013 respectively. The final two are due to expire in 2023 and 2026. The rental properties on the site are run by Wincasa AG on behalf of Credit Suisse. Wincasa was established by Credit Suisse in 1999 and since 2012 belongs to Swiss Prime Site.

Between 2009 and 2011, pursuant to the introduction of the altered Building and Space Regulations in 1999, and the completion of an agreement between Credit Suisse and Zürich City Council, Credit Suisse initiated expansion of its administrative headquarters on the site, adding 65,000m² to its area. However, despite this substantial increase in the size of the office space on the site, the terms of the agreement did not require Credit Suisse to set aside any amount of this for residential purposes. As such, no further housing was constructed. It is understood that this agreement is currently subject to investigation by the City's Commission for Auditing (Geschäftsprüfungskommission).

Brunaupark is today recognised as a close-knit, peaceful community, with residents from numerous different social, economic and religious backgrounds. The community includes around 100 children, and 15-20% of residents are over 65. Many families rely on the amenities, such as schools, kindergartens and day-care centres which are located in or near to the complex. There is a synagogue close by to which some residents have a longstanding attachment.

The planned demolition of Brunaupark

In the summer of 2018, there were reports that the pension fund of Credit Suisse was to initiate plans to demolish Brunaupark and replace the current housing with high-density, upper market apartments. In response to these rumours, Wincasa AG, sent brief letters to all tenants reassuring them that only minor modifications to the commercial area and other parts of the site were planned and that further information about the plans would be provided in due course. Various telephone enquiries by tenants also elicited the same response.

No further information was received by tenants until 27 March 2019 whereupon the residents of all but one block on the site, totalling 240 households, were handed notices of the termination of their leases. These terminations will become effective over the period from 30 June 2020 to 30 June 2023, meaning within four years all will have been evicted from the site. This is despite the fact that many of these evicted tenants will still be under the affordable rent schemes promised upon initial construction, some of which are effective until 2026.

On 17 April 2019, subsequent to the termination notices being sent to tenants, but before the pension fund of Credit Suisse had filed their application for a building permit with the City authorities, scaffolding was erected across the entire site in preparation for demolition. This makes the site less safe, prevents children from playing, and forms an unsightly backdrop for all residents. It is understood that the pension fund of Credit Suisse plans to commence demolition in 2021, meaning that many residents will still live on the site whilst it is being demolished and rebuilt – a reality which will cause significant disruption to them, likely lower their quality of life, and could generate safety concerns.

It has since become clear that despite only informing residents about the intended eviction, demolition and redevelopment plans at the end of March 2019, in reality these had been on the table since at least 2017, when the pension fund of Credit Suisse confidentially commissioned proposals for a new development on the site from four architectural firms. Reportedly the redevelopment of the Brunaupark complex – a measure affecting an entire small suburb of Zürich - was approved by the City department for construction of Zürich (Hochbauamt) in 2018 without any consultation of residents living in the area. In addition, it is alleged that the project was approved without discussion or approval by any local parliament, such as the Gemeinderat of Zürich.

According to information received the pension fund of Credit Suisse and Zürich City Council have seemingly attempted to hide their intentions about the redevelopment of Brunapark by keeping all information confidential until the latest possible moment. Furthermore, since being handed notices to vacate their properties, residents have reportedly not received any offer for compensation or for relocation to similar sized apartments in proximity. Nor has in-situ relocation to affordable newly planned apartments in the Brunaupark complex been offered.

Unaffordable Rent Increases

The current situation of eviction faced by the tenants of Brunaupark is exacerbated by the lack of affordability offered by the new housing proposed by Credit Suisse. In other words, even if some of the current tenants wish to stay on the site by renting new apartments there, many would be unable to afford to do so. This reality means that under Credit Suisse's plans current residents will have little choice, but to leave the area for good.

In general, current rents in Brunaupark range from CHF 1,200 for a 3.5 room apartment under an affordable-economic rent scheme, to CHF 3,500 for a 5.5 room apartment at market rent (additional costs excluded). The development plan published suggested that rental prices for a 3.5 room apartment built to replace that which has been demolished may likely cost between CHF 2,200 and 2,650, whilst rents for 4.5 room apartments will range from CHF 2,700 and 3,200 (without additional costs). It should be noted that the project description for Brunaupark mentions that these are only preliminary figures that may change depending on construction costs and interest rates. Given that currently newly built apartments in Zürich of about 100 square metres are hardly available below CHF 3000 it is questionable whether such rent levels will actually be maintained.

In order to facilitate relocation of residents, Wincasa has started to publish regularly a list of vacant housing under its administration in Zürich. A list dated 12 August 2019 is indicative about the actual pricing for any alternative accommodation on the market. 2.5 room units are not available below CHF 2000, 3.5 room units range between CHF 2,540 and CHF 5,490, while rental prices for 4.5 room apartments range between CHF 3715 and CHF 4230.² In summary, alternative accommodation in other areas of Zürich is not only difficult to find, but also unaffordable for most residents living at Brunaupark. Support provided to residents above 65 years of age is reportedly strongly geared at providing incentives to older persons to move to an old age home, however, most older persons want to continue to live independently in a standard apartment in the area as long as possible.

There is also mistrust by residents about future indicated rental prices, because during the last years the pension fund of Credit Suisse has significantly increased rents for homes in Brunaupark. When the first two 30-year periods under rent control ended in 2010 and 2013 respectively, the pension fund of Credit Suisse initiated various renovations to the properties, including fitting new windows, adding new kitchen equipment, and creating new bathroom areas. Subsequent to the conclusion of these renovations, rents for the renovated apartments were increased by approximately 60 percent or more, making them unaffordable for several tenants.

² https://brunaupark.ch/wp-content/uploads/2019/08/Verfuegbare_Wohnungen_Wincasa_Zuerich_190812.pdf

Residents of Brunaupark have mobilised against the evictions, forming an organisation called ‘Interessengemeinschaft Leben im Brunaupark’. They have collected 5,700 signatures on a petition against the plans. Reportedly the majority are formally challenging their eviction notices. However, as yet no tangible results have been achieved to prevent the eviction and demolition, or to ensure in situ-resettlement to affordable housing units.

Impacts

The impact of these plans on individual residents and the community as a whole has been severe. People living in Brunaupark are deeply shocked at the prospect of losing their homes, with older residents and those with children being placed under extreme mental pressure resulting from them facing the reality of having to leave the place they live and find new houses, new communities, and new resources and support networks. The eviction of such a large number of tenants will also cause major issues for them finding new, affordable accommodation, as Zürich is already faced with an affordable housing shortage. Many of the older residents have lived in Brunaupark for decades, their children grew up there, and they fully expected to live out their lives there. Several older tenants live close to their children and grandchildren who visit frequently. If they were to have to move, this would disrupt family life and decrease the support they derive from each other. In some cases, families having to move from Brunaupark would be disconnected from religious institutions with which they have a long standing relationship.

According to recent official data, only 0.2 per cent of all housing units for rental are vacant in the City of Zürich, meaning that there is hardly any alternative housing at offer on the rental market, in particular affordable housing for low-income households.³ Switzerland-wide, households with revenues below CHF 4,000 pay more than 35 per cent of the income for housing, indicating a serious housing cost overburden rate for low income households, which is even more acute in large cities.

While Switzerland witnessed hardly any inflation (the consumer price index increased by only 2 per cent between 2005 and 2018), rents for newly rented apartments have increased in the City of Zürich by 22 per cent during the same period.⁴ Nationwide rents of housing units have increased by over 17 per cent between 2005 and 2018.

As there is currently a housing shortage in Zürich, the idea to build additional housing units in central locations is understandable and generally desirable. However, reportedly the only social measure offered by the pension fund of Credit Suisse was that 16 of the new apartments would be offered at below market

³ Quelle: Bundesamt für Statistik, Leerwohnungszählung Juni 2018

⁴ Abschlussmietpreisindex, Mietpreisabschlüsse, Daten: WuestPartner 2005 bis 2018

value. This offer by the pension fund was conditional that the City Council would approve the early demolition of 170 housing units that are currently still subject to rent control until 2023 and 2026. Reportedly the City Council refused to agree to such a deal.

After urban renewal Brunaupark is expected to have a total of 500 housing units. The construction of 16 units under rent control would mean that only 3 per cent of the total housing stock would be reserved for low income households. According to official statistics, 7.7 percent of the population in the Region of Zürich currently lives in income poverty (defined as having an income below CHF 2259 for single person household and below CHF 3990 CHF for a household with two adults and two children). It is therefore obvious that offering only about 3 per cent of all planned housing units below market value, would be inadequate and not respond to the actual housing needs of the local population. It is reasonable to conclude that the entire project – if implemented unchanged - would rather shrink the number of affordable housing units in the city and thus undermine the realization of the right to adequate housing in Zürich.

Concerns relating similar business practices by Credit Suisse controlled companies and investment funds in Bale

Regrettably Brunaupark appears not to be an isolated case in which enterprises belonging or mandated by Credit Suisse appear to be engaged in business conduct undermining the right to adequate housing. This stands in contradiction to the official commitment by Credit Suisse to respect international human rights standards in its policies and operations.⁵

For example, plans have been reported to renovate in Bale in Schorenweg two high rights complexes with 192 tenants which are owned by Credit Suisse and one of its Zug based Real Estate Investment Funds. The affected units reportedly received new bathrooms in 2002 and appear overwhelmingly to be in good condition. After the proposed modernization the relatively affordable units with rents of 1,000 to 1,700 CHF for two to three rooms are expected to rise significantly and will be unaffordable to many of the current tenants. While Wincasa has reportedly offered some support to tenants to find alternative accommodation, tenants have not received any guarantee to continue renting their apartments or a similar sized apartment in the complex at affordable pricing after completion of the modernization.⁶

Overall, the modernization project at Schorenweg appears not to be motivated to improve or expand affordable housing in urban areas in Switzerland, but instead to ensure higher returns on the real estate portfolio of Credit Suisse by evicting

⁵ See <https://www.credit-suisse.com/about-us/en/our-company/corporate-responsibility/banking/human-rights.html>

⁶ See Ralph Hug, “Was gilt bei der Credit Suisse der Volkswille? Mieten + Wohnen, Nr. 2, April 2019, p.10-11.

tenants and offering renovated units at much higher price to new tenants.⁷ While tenant unions have demanded that the Canton of Bale should acquire the housing complex and hand it over to a social housing provider, it appears unclear whether there is sufficient political will at cantonal level to ensure a solution that would fully respect their right to adequate housing for the affected tenants.

While I do not wish to prejudge the accuracy of these allegations, I would like to express my sincere concern about the planned eviction of the Brunaupark residents that has been planned with insufficient consultation with those affected, and appears not to include any compensation or offer for proximate relocation to homes affordable to current residents. The planned urban redevelopment project will displace hundreds of people, including older persons and children. The rents for the new housing expected to be constructed are feared to be largely unaffordable for those evicted, resulting in their displacement to locations at the periphery of Zürich far from work and other services. Instead of increasing the number of housing units for low-income households in Zürich, the Brunaupark project appears rather to reduce this offer. Similar concerns relate to the planned modernization of high rise buildings at Schorenweg in Bale owned by an investment fund managed by Credit Suisse.

In the light of the above information, I am concerned that Credit Suisse and its pension and investment funds have so far given insufficient attention to adverse impacts of their activities and investments on the right to adequate housing. The same applies to Wincasa that has been mandated to manage real estate owned by pension and investment funds related to the Credit Suisse Group.

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.

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 therefore be grateful for your observations on the following matters:

1. Please provide any information and/or comments you might have on the above-mentioned allegations.
2. Please provide information on any human rights due diligence that may have been undertaken by your company to prevent, identify and remedy adverse impacts caused by your company on the enjoyment of the right to adequate housing in accordance with the UN Guiding Principles on Business and Human Rights.
3. Please provide more details when and in which form residents living in Brunaupark or at Schorenweg have been informed and consulted about the

⁷ See “Massekündigung am Schorenweg: Sammelklage eingereicht, Häuser “in gutem Zustand”, BZ, 29.4.2019.

planned renovation, redevelopment and demolition of housing requiring relocation and eviction of tenants.

4. Kindly inform us whether any social or human rights impact assessment of the planned development and modernization projects at Brunaupark in Zürich or Schorenweg in Bale have conducted. If yes, could you kindly share the respective assessments.
5. Please provide more information about current rents in Brunaupark and at Schorenweg and about potential measure taken by your company to ensure that after the planned redevelopment or renovation, current tenants will be able to continue living in the respective housing complexes at rents affordable to them, if they wish so.
6. Please provide details whether alternative accommodation has been offered to tenants living at Brunaupark, the location of alternative accommodation, and to whether alternative housing units offered would have resulted in increases housing or mobility costs for the affected tenants.
7. Are tenants that are relocated, entitled to return to Brunaupark after completion of the redevelopment project? If yes, to what extent would they have to pay significant more rent for a similar sized apartment?
8. Please provide more information whether residents living in Brunaupark in Zürich or at Schorenweg in Bale have taken legal recourse against the termination of the lease contracts, against expected rent increases or their planned relocation and eviction? If yes, what have been the results of such litigation.

I would appreciate to receive a response within 60 days. Passed this delay, this communication and any response received will be made public via the communications reporting [website](#). 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 Credit Suisse to take all necessary interim measures to prevent that the right to adequate housing of affected tenants is being violated. Furthermore I urge you to engage in meaningful consultation with all affected tenants, to undertake human rights due diligence and with the aim to prevent, identify and mitigate any adverse human rights impacts caused by the redevelopment or modernization plans in Brunaupark in Zürich and at Schorenweg in Bale. This should including a social and human rights impact assessment to ensure that the planned development and modernization projects at these locations become fully compliant with the human rights standards mentioned in the annex.

Please be informed that a similar letter has been send to the Pension Fund of Credit Suisse, to Wincasa AG, and to the Government of Switzerland to receive observations from federal, cantonal and local authorities.

Yours sincerely,

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

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, I would like to draw your attention to the Article 11 of the International Covenant on Economic, Social and Cultural Rights, and General Comments No. 4 , 7 and 24 of the Committee on Economic, Social and Cultural Rights relating to the right to adequate housing and the obligations of businesses under the Covenant. Business entities also have direct human rights responsibilities to respect and fulfil human rights, including the right to housing. This means that Credit Suisse, its Pension Fund and Wincasa should refrain from taking any actions that will cause harm to tenants as well as taking positive steps to ensure the realization of the right to housing.

I welcome in this context that Credit Suisse has adopted a Statement on Human Rights in which the corporation commits itself to respect human rights in its policies and operations in line with the UN Guiding Principles on Business and Human Rights. I also note with appreciation that Credit Suisse refers in its Statement explicitly to the international bill of human rights, which includes the International Covenant on Economic, Social and Cultural Rights.

The United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31), after years of consultations involving governments, civil society and the business community, have been established as the global authoritative norm for all States and companies to prevent, mitigate and address the negative business-related impacts on human rights. The responsibility to respect human rights is a global standard of conduct applicable to all companies, wherever they operate. It exists regardless of the ability and / or willingness of States to meet their own human rights obligations and does not reduce those obligations. "The responsibility to respect human rights requires that business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts."(Guiding Principle 13).

Furthermore, I would also like to bring to your attention that in order to exercise human rights due diligence, the UN Guiding Principles require business enterprises to engage in meaningful consultation with affected groups and other relevant stakeholders (Principle 17) and to conduct human rights impact assessments (Principle 19).

I also wish to draw your attention to the Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18, Annex), which provides that where development of housing areas takes place, and prior to eviction notices being issued, "[a]ll potentially affected groups and persons, including women, indigenous peoples and persons with disabilities, as well as others working on behalf of the affected, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider." (para.

38) Equally, the Basic Principles hold that where evictions must take place as a result of development, the Government, or other parties responsible for that eviction, must provide “just compensation and sufficient alternative accommodation, or restitution when feasible...” (para. 52). Furthermore, they note that evictions should never render anyone homeless, or leave them exposed to other violations of their human rights. When evictions do take place due to development, States should utilise the maximum of their available resources to ensure that other adequate housing is made available to those evicted. This “should be situated as close as possible to the original place of residence and source of livelihood of those evicted.” (para. 43) The Basic Principles and Guidelines also underline that transnational corporations and other business enterprises must respect the human right to adequate housing, including the prohibition on forced evictions, within their respective spheres of activity and influence (para. 73)

I further call your attention my recent report on the financialization of housing and the right to adequate housing (A/HRC/34/51) which contains several recommendations to address increased unaffordability and displacements of residents caused by investments into residential real estate.

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