

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; the Independent Expert on the enjoyment of all human rights by older persons; and the Special Rapporteur on extreme poverty and human rights

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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; Special Rapporteur on the situation of human rights defenders; Independent Expert on the enjoyment of all human rights by older persons; and Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 34/9, 34/5, 24/20 and 35/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning an increasing trend of land grabbing and forced evictions in Beijing. Your Excellency's Government is allegedly leading land grabbing, house demolition and forced evictions for development purposes in ways contrary to international human rights law.

According to the information received:

Massive evictions of tens of thousands of migrant workers from their homes have been carried out on the outskirts of Beijing by the authorities since November 2017. One emblematic case was triggered by a fire in an overcrowded and unsafe commercial and residential property in the Daxing District in the evening of 18 November 2017, which killed 19 people. Following this incident, the Beijing Municipal Authorities launched a 40-day campaign to clear out tenants from buildings, located on the outskirts of Beijing, which allegedly did not meet safety regulations. Those tenants were not given sufficient notice of the planned evictions, with some residents having only received three-hour notice before demolition vehicles arrived. Others were given just a few days to collect their belongings and vacate the premises. Moreover, the tenants have not been provided with any emergency or long-term alternative accommodation and they have no access to legal recourse in order to challenge the eviction.

The tenants of these buildings are predominantly low-income migrant workers from smaller cities and rural areas across China. However, many have been living in Beijing for years with their children who were born there and hence know no other home. Under the Government's *Hukou*, or household registration system, migrant workers who live in Beijing cannot obtain a *Hukou* of Beijing. This leaves them vulnerable to a lack of legal rights and protections, as well as a lack of social welfare protection including unemployment, medical and education

benefits guaranteed to registered urban residents. Without a safety net and access to basic services, migrant workers are living on the fringes of society and often vulnerable to being left homeless and destitute.

Efforts by local NGOs and volunteers to aid those affected by the evictions have also been stifled by the state authorities. The police ordered Beijing-based NGO, which was providing shelter, moving and transportation services to migrant workers, to shut down its operations, stating that the organization ‘lacked [a] permit.’ The authorities warned other volunteer groups to halt rescue efforts and censored online posts which communicated and coordinated rescue activities. Moreover, it is alleged that those human rights defenders who attempted to document the ongoing eviction were surveilled, threatened or placed in custody by the authorities, and some face criminal charges.

The second case received also occurred in November 2017. The Government of Fuqing city took a decision to demolish Xixia village of Honglu town, Fuqing city, Fujian province. The villagers refused to leave their homes. The Secretary of Municipal Committee of the Communist Party of China in Fuqing city and two leaders of the house demolition team have been threatening and intimidating villagers to sign agreements to vacate their houses. To escalate the intimidation, the local police arrested two representatives of the older persons’ Community which supports members of the village to improve their welfare. The local authorities accused the arrested individuals of extorting money from enterprises which in fact donated funds to the elderly community. The arrested individuals are older persons and their imprisonment is having a negative impact on their health. They have no access to lawyers. They have been threatened that they will not be released until they have agreed to the demolition of their houses and until the demolition has been completed.

The third case received involves the demolition of houses and land grabbing in Liangxiang, Fangshan district of Beijing. On 7 February 2018, four houses were suddenly destroyed by a group of unidentified persons. The residents of the houses did not receive any formal notice about the demolition and have not been offered any compensation to date. Allegedly, the expropriation and demolition of houses have been carried out in Liangxiang by the local authorities since 2015 and the expropriated land has been sold to real estate developers. Despite repeated requests by the tenants, the police have not taken any action to protect their houses. Contrary to the procedures provided in the Land Administration Law of China, the victims received no notification of planned demolition or expropriation of their land from the local Government.

These evictions and demolitions of mostly poor households appear to be in line with the Government’s ongoing effort to reduce the city’s population and redevelop land, though forced evictions and demolitions have been taking place in urban areas for many years. The city of Beijing published a plan in May 2016 to cap its population at 23 million by 2020. Information also suggests that these

evictions have been spurred by the increase in land value. For example, in the Daxing District, property prices have recently increased due to the forthcoming new international airport scheduled to open in 2019.

In all of these alleged cases above, the affected residents have not received sufficient compensation, and some have not received any at all, though compensation is guaranteed by law. Additionally, alternative accommodations were not made available in a reasonable time and the affected people were neither consulted nor received adequate and reasonable notice. These practices do not meet the procedural requirements provided by national laws, which guarantees no forced demolitions, compensation and official announcement in case of forced evictions. The practices also disrespect international human rights standards related to legal resettlements.

The existing legal framework in China does not provide for sufficient protection or remedies required under international human rights law. Forced evictions are only permitted under international human rights law in the most exceptional circumstances, after all options have been explored and where no reasonable alternative exists. In these exceptional circumstances, prior to any eviction, authorities are under the obligation to provide meaningful consultation with all affected persons and on the basis of these consultations provide land or an area for resettlement that is accepted by the community. In the case of development based evictions, the housing and land to which people are relocated must be of better or equal quality. Forced evictions that result in the loss of adequate housing constitute a prima facie violation of international human rights law. Where such violations have occurred, effective remedies, including compensation must be provided.

The land tenure system of China grants the State extremely wide discretion to expropriate land in the interest of the public or renovation of old towns in urban areas. The absence of definition of “public interests” allows expropriation to take place for commercial or industrial purposes. The existing legal framework does not effectively guarantee the right of the affected people to be consulted on planning and decision-making, either. According to Land Administration Law, the local government “announces” expropriation after it has been approved by the State Council. With regard to urban residential land, new regulations were introduced to put an end to forced demolitions in cities in January 2011. Under these regulations, no violence or coercion, such as illegally cutting water and power supplies, can be employed to force homeowners to leave, and compensation for expropriated homes should be no lower than the sum of the market price of similar properties at the time of the expropriation. Furthermore, under the new law, if the government is unable to reach an agreement about expropriation or compensation with the homeowners, demolition can only be carried out after the court’s review and approval. Under previous regulations, local governments were authorized to enforce demolition at their own will, and to the effect that the regulations enacted in 2011 have not been effective and the

tenants continued to be evicted without adequate notice, consultation or compensation.

While we do not wish to prejudge the accuracy of these allegations, we are concerned that the increasing land exploitation and forced evictions are being carried out without following the procedures provided by national and international law. We also reiterate our concern that the insufficient procedural protections in national law as well as the ongoing practices may be contrary to your Excellency's Government obligation to respect, protect and fulfil the right to an adequate standard of living, including the right to adequate housing, and the right to non-discrimination.

We wish to also recall a resolution of the Human Rights Council 35/21, sponsored by your Excellency's Government and adopted in June 2017. In the resolution, the Human Rights Council affirms that development contributes significantly to the enjoyment of all human rights by all and calls upon all States to spare no effort to promote sustainable development, in particular while implementing the 2030 Agenda for Sustainable Development, as it is conducive to the overall enjoyment of human rights. As the 2030 Agenda pledges to leave no one behind, development in sacrifice of certain populations, often marginalized, is not only contrary to human rights obligations but also contrary to political commitments made in the 2030 Agenda.

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.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore 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 indicate if all feasible alternatives to eviction have been explored in the alleged cases and if so, please provide details as to why proposed alternatives to the eviction have been deemed unsuitable.
3. Should the involuntary resettlements occur, please indicate what resettlement programs have been considered, how they comply with international standards relating to access to adequate housing and to participation in cultural life, and whether such programs have been developed in conjunction with the affected populations.
4. Please indicate what measures have been taken by the central Government when forced evictions and demolitions are carried out by local authorities in violations of national law.

5. Please indicate what legal procedures and remedies are available, including notice periods, and access to legal aid and to adjudicative bodies, for the residents to challenge eviction and displacement plans.
6. Please indicate if revision of the national legal framework has been considered to ensure it is consistent with protections against forced evictions under international human rights law.

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

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

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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

Rosa Kornfeld-Matte
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Philip Alston
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Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to remind your Excellency's Government of its obligations under the International Covenant on Economic, Social and Cultural Rights to which China is a party since 27 March 2001 upon ratification. More specifically, we would refer to Article 11.1 of the Convention, which recognizes the right of everyone to an adequate standard of living for themselves and their families, including food and housing, and to the continuous improvement of living conditions. 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.

The Committee on Economic, Social and Cultural Rights in its General Comment No.4 has stressed that the right to adequate housing should not be interpreted in a narrow r restrictive sense such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. This General Comment outlines the following aspects of the right to housing: (a) legal security of tenure; (b) availability of services, materials and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; (g) cultural adequacy.

According to the Committee's General Comment No. 7, paragraphs 13 and 14, 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. Legal remedies or procedures should be provided to those who are affected by eviction orders. 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. Moreover, in cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.

Furthermore, according to the Committee's General Comment No. 7 on forced evictions, paragraph 15 and 16, procedural protections are essential in relation to forced evictions, 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. In paragraph 17, the Committee further emphasizes that where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of their available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available to them.

We wish to further recall the Committee's General Comments No. 3 and 9 on obligations of States and the nature of their responsibilities at all levels of government, including at the city level.

I wish to also to call your attention to the work of my predecessor Ms. Raquel Rolnik, Guiding Principles on the security of tenure for the urban poor (A/HRC/25/54). As well as the Basic Principles and Guidelines on Development Based Evictions and Displacements, which reiterate the notion that under international human rights law the obligations of States include the respect, protection and fulfilment of all human rights and fundamental freedoms, and therefore must refrain from violating human rights, including the right to adequate housing which includes, inter alia, the right to protection against arbitrary or unlawful interference with privacy, family and home.

In this regard, we would also like to draw your Excellency's attention to the United Nations Principles on Older Persons and the comprehensive report of the Independent Expert on Older Persons (A/HRC/33/44), in which the mandate-holder stressed that housing is an essential aspect of the ability of older persons to live an autonomous life (para. 71).

We would further like to refer to 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, in particular articles 1, 2, 6, 9 and 12. Human Rights Council resolution 13/13 also urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms. We, moreover, refer to the right of freedom of opinion and expression, guaranteed under Article 19 of the ICCPR.