



Human Rights Watch Submission to the UN Committee on Economic, Social and Cultural Rights in Advance of its Pre-Sessional Review on Kyrgyzstan October 2014

We write in advance of the United Nations Committee on Economic, Social and Cultural Rights (“the Committee”) pre-sessional review of Kyrgyzstan to highlight expropriation of property in the southern city of Osh as a particular area of concern we hope to see the Committee take up as part of its examination of the Kyrgyz government’s (“the government”) implementation of the International Covenant on Economic, Social and Cultural Rights (“the Covenant”).

Starting in late summer 2010, following ethnic clashes in June 2010 which claimed hundreds of lives and resulted in massive destruction of property, the Osh City Mayor’s office has been carrying out expropriation of private properties, including homes and businesses, in several predominately ethnic Uzbek neighborhoods in central Osh. While both ethnic Uzbeks and ethnic Kyrgyz suffered losses during the violence, ethnic Uzbeks suffered the majority of the casualties and destroyed homes. To date, some residents continue to face unlawful expropriation of their homes, while others have already had their properties in the city center expropriated in violation of internationally protected human rights.

This submission provides an overview of Human Rights Watch’s principal concerns with respect to the process by which homes and properties in Osh have been subjected to expropriation and the lack of effective legal recourse or remedy, in violation of Covenant article 11. We hope the Committee will find this information useful for its upcoming consideration of the government’s compliance with the Covenant.

For additional information about our work on Kyrgyzstan, please see Human Rights Watch’s Kyrgyzstan page: <http://www.hrw.org/europecentral-asia/kyrgyzstan>.

Lack of Transparency and Consultation

Residents of four streets affected by urban development projects in Osh since 2010—Monueva, Pakhta-Kucha, Mazhrintal and Oshskaya—informed Human Rights Watch that they were not consulted by city officials while street widening and lengthening plans were under development, that no public hearings had been held before the time they were informed their properties would be expropriated, and that they had not been provided with information about alternatives that had been considered.

For example, in April 2012, without any previous consultation with Oshskaya Street residents, representatives of the Osh City Department of Architecture brought written notices informing Oshskaya Street homeowners that their houses would be subject to partial or full demolitions. According to one resident, the authorities did not provide any additional information about the basis upon which such an order was given or any information about due process rights concerning evictions. Only after the fact, on July 24, 2012, did the mayor's office issue an executive order that specified the authorities' plans to extend Ak-Burinskaya Street from Navoi Street to Uch-Kucha Street.

Furthermore, the Osh City Department of Architecture sent additional written notices dated August 22, 2012 (copy on file with Human Rights Watch) to Oshskaya Street residents by mail informing them that their properties would have to be demolished just two weeks later. In the notice the Osh city head architect stated that "the department **demands** [emphasis in the original] that you dismantle part of your house by your own means by 05.09.12 [September 5, 2012]." Oshskaya Street homeowners did not follow through with the order, and as of this writing are attempting to contest in court the decision of the mayor's office to expropriate their homes (more below).

Lack of Fair Compensation

Kyrgyz national legislation stipulates that residential property owners shall be paid compensation for the sale of their property for state use.¹ In practice, however, Osh city authorities have not been consistent in approaching property owners with offers to purchase their residential property at market rates, nor have they provided fair compensation in line with international norms. In addition, in some instances, homeowners faced pressure to sign purchase agreements.

In the case of Monueva Street, for example, the Osh city authorities in early 2012 organized an appraiser to evaluate the worth of the properties. Residents were highly dissatisfied with the initial appraisals and appealed to high-level governmental officials, including the president, for fair compensation. Following receipt of these letters, a second appraisal was conducted and, on its basis, the Osh City Municipal Property Department agreed to raise the monetary component of the compensation package.

However, some homeowners voiced concern that the compensation they received was still not equal to the value of the property seized and that they would not have agreed to the undervalued compensation amount if they had felt they had other options, but that they were afraid of possible negative repercussions by the authorities. For example, one resident told Human Rights Watch, "Everyone on the street was against the compensation [that was first offered]. It was too little. At first we didn't agree; then they added 20 percent. Then we agreed. Whether we wanted to agree or not, we had to."

¹ According to the Land Code, article 68, point 3: "the calculation of the price of the land plot for compulsory purchase shall be comprised of the market value of the right to the land, and of the buildings and structures located on it, and the damages inflicted on the land owner/user by termination of the right to the land, including the damages connected with early termination of his obligations to third parties."

Another resident described to Human Rights Watch the pressure exerted by city officials on homeowners to sign the agreements: "In February they started to come. They came almost every day until we tore down the house. They came to find out what we were doing, if we were moving along. They came to check on us."

In addition, under Kyrgyz national law, homeowners in Kyrgyzstan whose residential properties are subject to compulsory purchase for state needs are not obliged to sell only a portion their property if the demolition of a property renders the remainder of the property hazardous or unfit for living. Instead, only a whole property may be expropriated.²

However, several Monueva street homeowners—all of whom live or lived in traditional-style Uzbek houses, or interconnected rooms encircling a central open courtyard area—had only a portion of their houses seized, leaving the remaining portion directly abutting the road. These residents told Human Rights Watch that it would have been better for them if they had been able to sell their property in full to the Municipal Property Department rather than just the portion of the property affected by the widening of the street; however, it appears that they were not given the option. In some cases homeowners were left with homes too small to meet their needs or undesirable because of their proximity to the newly widened street.

Finally, property owners stated that the land plots offered by the Municipal Property Department as part of their compensation package were not viable for living, noting that: a) there is neither electricity nor potable water in that area; b) existing public transportation does not extend to that area, which is located approximately 15 kilometers from the center of Osh where their previous homes were situated; and c) there is a lack of basic services, including schools and polyclinics.

Lack of Effective Legal Remedy

Homeowners under threat of property expropriation should have the opportunity to register their grievances and to have such grievances be reviewed in an independent and transparent manner.

Although Kyrgyzstan's national laws encompass the right to appeal to the judiciary, between 2010 and 2012, Mazhritmal, Monueva, and Pakhta-Kucha Street homeowners declined to file complaints out of concern for their safety, fearful of repercussions following the June 2010 ethnic violence in Osh. These fears are consistent with Human Rights Watch's findings concerning the independence of the judiciary, in particular, in the aftermath of the June 2010 ethnic violence, as documented in our report, "Distorted Justice: Kyrgyzstan's Flawed Investigations and Trials on the 2010 Violence."³

² "Research into the Expropriation of Personal Property in the Kyrgyz Republic—An Analysis of Current National Law," p. 18, Commissioned by the Office of the High Commissioner for Human Rights Central Asia Regional Office, 2012.

³ Distorted Justice: Kyrgyzstan's Flawed Investigations on the 2010 Violence, Human Rights Watch Report, August 2011, <http://www.hrw.org/reports/2011/06/08/distorted-justice-o>.

Even in the sole case in which homeowners have attempted to contest expropriation orders in courts, delays have undermined their access to an effective remedy.

On February 24, 2014, 23 Oshskaya Street homeowners filed a collective complaint against the Osh City Mayor's Office requesting that the expropriation order issued on November 26, 2013 be found "unlawful" and that their homes and land plots be excluded from the list of properties slated for expropriation and demolition.

In mid-July, the Osh District Interregional Court began consideration of the case. Following delays due to the city authorities' failure to appear for hearings, on September 10 the court approved a motion by the mayor's office to halt proceedings. On September 11, the Oshskaya Street residents appealed the decision, but as of this writing, it had not yet been considered and the case appears stalled.

The example of the Oshskaya street proceedings to date and the actions by city officials raise serious questions as to whether the Osh courts can provide an effective means of redress.

Recommendations for Steps the Kyrgyz Government Should Take to Address the Above Concerns:

- Ensure that all evictions, expropriations, and demolitions are carried out in a fair and transparent manner and are consistent with Kyrgyz national law and international human rights law.
- Provide property owners affected by expropriation orders clear information about the timing and legal basis of expropriations, compensation, and resettlement options, as well as access to an effective complaint mechanism that addresses grievances in a clear and transparent manner, and an effective remedy.
- Ensure that any future evictions of homeowners who decline to sell their properties for state use are carried out with full respect for their safety and dignity, and in accordance with the law.
- Ensure that mechanisms to provide property owners with compensation for expropriated property are fair and transparent, with a clear basis in law.
- Guarantee fair compensation for expropriated properties, based on the market value of each property, determined by independent appraisal.
- Reassess the compensation offered to those who lost their homes and possessions.