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and

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**INDIVIDUAL COMPLAINT TO THE HUMAN RIGHTS COMMITTEE
UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL
COVENANT ON CIVIL AND POLITICAL RIGHTS
and
REQUEST FOR URGENT INTERIM MEASURES
25 June 2011**

I. Information Concerning the Complaint

THE AUTHORS (VICTIMS):

List of the Complainants who authorize Equal Opportunities Association (EOA) and the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) to represent them before international justice authorities:

1. Liliana Assenova Naidenova
2. Blaga Lubchova Naidenova
3. Traianka Ivanova Naidenova
4. Gura Borisova Marinova
5. Pavel Triachev Peshev
6. Blagoi Trianov Assenov
7. Pavlina Marinova Mladenova
8. Stefka Vassileva Christova
9. Stoianka Tzvetanova Trianova
10. Vela Borisova Mihailovaq
11. Address for every victim: No 2 Dobri Jeliaskov str., Sofia – Vuzrajidane district, Bulgaria

REPRESENTATION:

Name: Global Initiative for Economic, Social and Cultural Rights
Counsel: Bret Thiele, Co-Executive Director
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and

Name: Equal Opportunities Association (EOA)
Counsel: Daniela Mihailova, Legal Program Coordinator
Address: No 3 “313” str., 1373 Sofia, Bulgaria (for all correspondence to EOA related to this complaint)
Email: equal_opportunities@abv.bg

Authorisation: The representatives are acting by virtue of a power of attorney signed by the Complainants on or about 25 June 2011 at Sofia, Bulgaria.

STATE PARTY:

Bulgaria (ratified the International Covenant on Civil and Political Rights (ICCPR) on 21 September 1970; ratified the {First} Optional Protocol 26 March 1992).

VIOLATIONS:

Articles 2, 17, 26

II. Statement of the Facts

1. The Dobri Jeliaskov community consists of impoverished Roma and has been in existence for over 70 years. During this time, the housing of the community has been recognized by public authorities including being provided with individual mail service as well as publically regulated services such as electricity. The community also has police registration of their address.
2. Currently 34 individuals live in the community, 15 of whom are minor children. The remainder of the community left the area after the initial eviction orders where issued in 2006.
3. Ten households are now under imminent threat of forced eviction and demolition. None of those to be forcibly evicted have been offered alternative housing and no meaningful consultation has taken place with the community. The mayor has stated that the municipality can not provide alternative housing for the families as he claims they live there illegally.

4. The causes for the community of Dobri Jeliakov being in an informal settlement (*e.g.*, “unlawful buildings”) is due in large part to the persistent pattern of racial discrimination against Roma. This discrimination includes lack of education and employment opportunities necessary to afford housing at market rates. Indeed, the Committee on Economic, Social and Cultural Rights has stated that “success has not been achieved” in government efforts to combat unemployment as well as “deplor[ing] the situation where those [Roma] who are employed receive salaries which do not allow them to secure for themselves and their families an adequate standard of living.”¹

III. Urgent Request for Interim Measures including Injunction against Forced Eviction

5. All of the Complainants from the Dobri Jeliakov community face imminent forced eviction and destruction of their homes. These threatened forced evictions may be implemented before the end of July 2011.

6. Forced eviction and destruction of homes will result in irreparable harm to the Complainants. Such irreparable harm includes, *inter alia*, the loss of housing and other personal belongings, the dangers associated with lack of shelter due to resulting homelessness, and the loss of social networks.

7. The primary importance of the ability to implement interim measures in cases of alleged human rights violations is to terminate ongoing abuse, avoid the possibility of irreparable harm which cannot be compensated for in a final judgment, ensure the integrity of the case and preserve the subject matter of the dispute before the Committee.² A decision on admissibility or exhaustion of domestic remedies does not need to be made prior to issuing an interim measure.³ The Committee need only make a *prima facie* determination of jurisdiction based on the provisions

¹ Committee on Economic, Social and Cultural Rights, Concluding Observations: Bulgaria, UN Doc. E/C.12/1/Add.37 (8 December 1999) at paras. 13 and 14.

² See, *e.g.*, Nuclear Tests (Austl. v. Fr.) 1973 I.C.J. 99, 103 (1973); Peace Community of San José de Apartadó (Colombia), Provisional Measures, Order of June 18, 2002, Inter-Am. Ct. H.R. (ser. E), P 4 (2002); La Nación Newspaper (Costa Rica), Provisional Measures, Order of Dec. 6, 2001, Inter-Am. Ct. H.R. (ser. E), P 4 (2001); Communication 133/94, *Association pour la Défense des Droits de l'homme et des Libertés v. Djibouti*, 13th Annual Activity Report of the African Commission on Human and Peoples' Rights 1999-2000, AHG/222 (XXXVI) Annex V. p. 90, para 5. *See also*, Jerome B. Elkind, Interim Protection, a Functional Approach 26-28 (1981).

³ *See*, Statement by Martin Scheinen, former member of the Human Rights Committee, UN Doc. CAT/C/SR.487, para 4.

invoked by the Applicant.⁴ Indeed, the ability of applying interim measures prior to a decision on admissibility is consistent with international norms as evident by the explicit language of the Rules of Procedure of the Committee on the Elimination of All Forms of Discrimination against Women and the draft Rules of Procedure of the Committee on Economic, Social and Cultural Rights which are based on the existing international jurisprudence.⁵

8. Consequently, EOA and the GI-ESCR request interim measures be granted as a matter of urgency, including an immediate injunction to prevent any evictions of the Dobri Jeliaskov community.

9. Interim measures including injunctive relief is not an unprecedented remedy in the case of forced evictions, for instance the Inter-American Commission on Human Rights recently offered such a remedy in the context of Haitian IDPs, in which the Inter-American Commission “decided to grant precautionary measures in relation to the forcible evictions from the IDP camps.”⁶

IV. Admissibility

10. Bulgaria has denied the long-standing community of Dobri Jeliaskov, situated in Sofia, Bulgaria, any security of tenure, including the minimum “degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats” required by its international and domestic human rights obligations.⁷

11. There are no mechanisms at the domestic level to challenge successfully eviction in such cases where there exists a denial of even the minimum degree of security of tenure. Notwithstanding,

⁴ *Belgium v. Senegal*, ICJ, Order on Request for the Indication of Provisional Measures, 28 May 2009.

⁵ Both stating that: “Where the Committee exercises its discretion [to issue Interim Measures], this does not imply a determination on admissibility or on the merits of the communication.”

⁶ Inter-American Commission of Human Rights, Press Release No. 114/10 (5 November 2010).

⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 4, UN Doc. The right to adequate housing (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 18 (2003) at para. 8(a), (stating in relevant part that “Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.”)

EOA has assisted the community to challenge the eviction orders by bringing a case before the Sofia City Court.

12. The Sofia Municipality, Vuzrajdane sub-district, issued the eviction orders against the community of Dobri Jeliaskov str., in Sofia, Bulgaria in 2006. The eviction orders cite Art. 65 of the Municipal Property Act, which allows for eviction and demolition of housing built without the proper permits on municipal property land. The community is made up of impoverished Roma citizens of Bulgaria. The orders require the residents to vacate and demolish their own homes. Representing the community, the EOA appealed the orders before the Sofia City Court and asked for an injunction against the eviction, which is permitted by Art. 65 of the Municipal Property Act. That injunction was initially granted by the Sofia City Court.

13. In 2007, however, the Sofia City Court upheld the eviction orders. The Sofia City Court decision was appealed before the Supreme Administrative Court, which upheld it on 28 October 2009. Since then the orders are subject to imminent execution. On 26 March 2011 the Sofia Municipality issued a protocol for execution of the eviction orders. This protocol has been handed to the Roma inhabitants on 23 June 2011, and they were given seven days term for objections. Objections have been filed with the municipality, however this does not halt the evictions from being implemented and the community is now under threat of imminent forced eviction.

V. Law

A. The forced evictions and threatened forced evictions amount to a violation of Articles 17 of the International Covenant on Civil and Political Rights read in conjunction with Article 2.

14. The Human Rights Committee has previously stated that the practice of forced evictions “arbitrarily interferes with the Covenant rights of the victims of such evictions, especially their rights under article 17 of the Covenant.”⁸ The Committee went on to state that the State party should “ensure that evictions from settlements do not occur unless those affected have been consulted and appropriate resettlement arrangements have been made.”⁹

⁸ Human Rights Committee, Concluding Observations: Kenya, para. 21, UN Doc. CCPR/CO/83/KEN (29 April 2005).

⁹ *Id.*

15. In similar factual situation, the Human Rights Committee condemned forced eviction and demolition of homes because their construction lacked building permits as well as discriminatory municipal planning systems.¹⁰

16. The threatened forced evictions of the Dobri Jeliaskov community is also unlawful in that it contravenes, *inter alia*, the right to adequate housing, including the prohibition on forced eviction, enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) as informed by General Comments Nos. 4 and 7 of the Committee on Economic, Social and Cultural Rights, and those General Comments provide persuasive authority for defining the prohibition on forced evictions under international law generally and including the ICCPR..

17. Furthermore, as examined in greater detail below, the ICESCR is binding within the domestic legal regime of the Republic of Bulgaria pursuant to Article 5(4) of the Constitution of the Republic of Bulgaria. As such, forced evictions, as contrary to the ICESCR, amount to *unlawful* interference with the home and thus in violation of Art. 17 of the ICCPR.

18. The forced evictions are also *arbitrary* in that they are undertaken in a racially discriminatory manner. The threatened forced evictions of the community is due in large part because of the residents Romani ethnicity and the informal housing conditions under which persons of Romani ethnicity have to live on account of their ethnicity. As such, the evictions have both an unlawful discriminatory intent as well as an unlawful discriminatory effect.

19. Additionally, on 23 February 2005 the Council of Europe adopted Recommendation (2005) 4 on improving the housing conditions of Roma and Travellers in Europe. As a Member State of the Council of Europe, and pursuant to Article 5(4) of its Constitution, the Republic of Bulgaria is obligated to abide by this Recommendation.

20. Recommendation (2005) 4, *inter alia*, requires that national housing policies address the specific problems of Romani housing as a matter of emergency and in a nondiscriminatory manner.

¹⁰ Human Rights Committee, Concluding Observations: Israel, para. 17, UN Doc. CCPR/C/ISR/CO/3 (29 July 2010).

21. The Recommendation also states that “Member states should promote and protect the right to adequate housing for all, as well as ensure equal access to adequate housing for Roma through appropriate, proactive policies, particularly in the area of affordable housing and service delivery.”

22. With respect to “protection and improvement of existing housing”, the Republic of Bulgaria “should ensure that Roma are protected against unlawful eviction, harassment and other threats regardless of where they are residing” and “should establish a legal framework that conforms with international human rights standards, to ensure effective protection against unlawful forced and collective evictions and to control strictly the circumstances in which legal evictions may be carried out.”

23. Council of Europe General Recommendation (2005) 4 should be used as persuasive authority in interpreting Article 17 of the ICCPR and, since it is binding law on the Republic of Bulgaria, any contravention of Council of Europe General Recommendation (2005) 4 would amount to an *unlawful* interference with the home.

24. Based on the foregoing, the threatened forced eviction at issue in this Complaint should be deemed unlawful as well as arbitrary and consequently in violation of Article 17.

B. The threatened forced evictions amount to a violation of Articles 26 of the International Covenant on Civil and Political Rights read in conjunction with Article 2.

25. Article 5(4) of the Constitution of the Republic of Bulgaria states that:

Any international instruments which have been ratified by the constitutionally established procedure, promulgated, and come into force with respect to the Republic of Bulgaria, shall be considered part of the domestic legislation of the country. They shall supersede any domestic legislation stipulating otherwise.¹¹

26. As such, the rights enshrined in the ICCPR and other treaties ratified by the Republic of Bulgaria are directly binding within the domestic legal framework of the Republic of Bulgaria. Article 26 requires that the rights guaranteed by Article 17 of the ICCPR be guaranteed without

¹¹ Constitution of the Republic of Bulgaria, Art. 5(4), (12 July 1991).

discrimination on account of Romani descent as well as guaranteeing the equal protection of Article 17 of the ICCPR.

27. Additionally, the Republic of Bulgaria has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 21 September 1970. Consequently, the rights enshrined in the ICESCR are directly binding within the domestic legal framework of the Republic of Bulgaria, including the right to adequate housing, and including the prohibition on forced eviction, enshrined in Article 11 of the ICESCR.

28. Article 11 of the ICESCR, read in conjunction with Article 2, obliges the Republic of Bulgaria to respect, protect and fulfil the right to adequate housing without discrimination.

29. The right to adequate housing enshrined in Article 11 of the ICESCR, similar to the rights protected by Article 17 of the ICCPR, prohibits forced eviction. Under the ICESCR, evictions can only be justified in highly exceptional circumstances and after all feasible alternatives to eviction have been explored in meaningful consultation with the persons affected.¹² Even then, various due process protections as outlined in General Comment No. 7 of the Committee on Economic, Social and Cultural Rights must be adhered to.¹³ Finally, and even if the due process criteria have been satisfactorily met, evictions can not be carried out in a discriminatory manner nor can they result in rendering individuals homeless or vulnerable to the violation of other human rights.¹⁴ As the facts and domestic procedures described above demonstrate, the Republic of Bulgaria has failed to abide by the this legal process related to the prohibition on forced eviction.

¹² See Committee on Economic, Social and Cultural Rights, General Comments. Nos. 4 and 7.

¹³ Committee on Economic, Social and Cultural Rights, General Comment 7, Forced evictions, and the right to adequate housing (Sixteenth session, 1997), U.N. Doc. E/1998/22, annex IV at 113 (1997), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 45 (2003) (para. 16 states that “The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions and where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.”).

¹⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 7.

30. Consequently, the Republic of Bulgaria is in violation of Article 26 of the ICCPR for not prohibiting discrimination on account of Romani descent and not providing for the equal protection of Article 17 of the ICCPR or for the equal protection of the rights enshrined in the ICESCR, including the right to adequate housing and the prohibition on forced eviction.

VI. Conclusions

31. If the forced eviction of the Dobri Jeliaskov community is implemented, the Republic of Bulgaria would violate Articles 17 and 26 of the ICCPR read alone and in conjunction with Article 2, including the non-discrimination clause of Article 2(2).

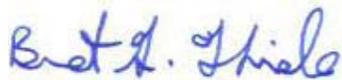
32. An immediate injunction to any forced eviction of the Dobri Jeliaskov community should be granted as a matter of urgency.

33. Remedies should also include the regularization of Dobri Jeliaskov community including the provision of a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.

34. All remedies should be implemented with the genuine and meaningful participation of the Dobri Jeliaskov community.

35. GI-ESCR and EOA reserve the right to amend this Complaint.

Respectively submitted,



Bret G. Thiele
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