Press Statement

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,
Ms Leilani Farha
Visit to Serbia, including Kosovo
Belgrade, 25 May 2015

Introduction

Serbia has gone through several historic events in the last decades, with far reaching consequences for the country. Not only the break-up of the former Yugoslavia but also the transition from socialism to a market-based-economy which shifted all public housing stock to private, virtually overnight. In the 1990s, the country experienced an influx of refugees and internally displaced persons (IDPs). Currently, Serbia has also experienced natural disasters – earthquakes and floods. Combined with a poorly performing economy, high unemployment rates, and new waves of refugees and migrants, the housing conditions of the most vulnerable are simply not meeting international human rights standards.

Diverse actors, including the central and local level governments, United Nations and European entities, and a host of donor countries and institutions, are implementing housing programmes with a view to improving living conditions for a number of vulnerable groups. Many of these have had a positive impact on housing conditions. However, housing needs still far exceed available programs, with thousands of people living in deplorable conditions. Whether residing in informal settlements, renting or owning, thousands of people are going without the basics: drinking water, sanitation and sewer systems, structurally sound and accessible units, wider social infrastructure, and security of tenure. I have heard testimonies about overcrowding, with multiple generations living under one roof. I have also heard concerns about the cost of electricity and heating outstripping monthly social benefits, as well as about a newly imposed property tax for social housing tenants that many find difficult or impossible to afford.

These housing conditions and the number of persons affected, combined with an uncertain economic future for the country, suggests that Serbia has an urgent housing crisis. If not addressed immediately, I fear the conditions are ripe for the crisis to deepen and become intractable: youth unemployment is at 50% (more than double the national average of 20.3% in 2014), austerity measures are being implemented, and poverty is increasing.

My remarks today are a preliminary overview of some key issues that have emerged from this part of my visit. The final report, to be presented to United Nations Human Rights Council in March 2016, will address a wider range of issues and offer further recommendations.

1. National Housing Strategy Based in Human Rights, including Needs Assessment and Amendments to Relevant Law

As it stands, Serbia has several housing and related laws and strategies. These include the Law on Social Housing (2009), the Law on Social Welfare (2011), the National Poverty Reduction Strategy (2003) and the National Strategy of Social Housing (2012). Despite the proliferation of these instruments, there appears to be a lack of implementation.

That being said, a number of housing programmes have been implemented. For example, a social housing programme was initiated in 2009 by the central government in concert with local self-governments to address the inability of a large percentage of the population to pay market rates for housing and to begin to rectify the lack of public or subsidized rental accommodation. The international community has also invested in a number of housing programmes aimed at ensuring adequate housing, in particular for refugees and displaced persons, and Roma, as well as, from 2014, for victims of catastrophic flooding.

The existence of these strategies and projects are all positive developments. However, not all of these developments are based on the principle that adequate housing is a human right. Moreover, the multiplicity of laws and strategies suggests a fragmented approach without an overarching framework or a long-term unifying vision.
In my view, the starting point for effective housing policy is a national housing needs assessment as a vehicle for determining the extent of the challenge. From there, a national, coordinated housing and homelessness strategy based in human rights should be developed.

In this light, I strongly recommend:

- The central government, in concert with local self-governments, should undertake a national housing needs assessment compiled against a clear set of human rights indicators. Disaggregated data should also be collected or updated for this purpose.
- The central government should adopt a national housing and homelessness law and a strategy to accompany it. At the time of my visit, new legal provisions are reportedly under preparation for adoption later this year. This law must be taken as a key opportunity for Serbia to address in an effective and comprehensive way the housing needs of all people, including those most excluded, with the understanding that housing is a human right, not merely a policy objective.

Issues for consideration in drafting and approving this law include regulation of urban planning and zoning, such as for example placing requirements on private developers to reserve a certain percentage of housing in central and well serviced locations for social purposes, as well as to support the development of social infrastructure. Genuine consultation with a variety of stakeholders and representatives of vulnerable populations, local self-governments, the Ombuds Office, and civil society should be ensured in preparing this law. The national strategy to accompany it should be based in and incorporate international human rights law principles and standards with respect to housing, in line with ‘adequacy’ as defined by the Committee on Economic, Social and Cultural Rights (CESCR) in its general comment 4 on the right to adequate housing. Provisions regarding forced evictions should be brought into line with CESCR Committee’s general comment No. 7. The law should also include measureable goals and timelines, monitoring and review mechanisms, and mechanisms for redress for violations of the right to housing.

2. Access to Justice and Effective Legal Remedies

The Constitution of Serbia provides extensive human rights guarantees. Article 18 sets out that human rights law is directly applicable, making explicit reference to international law in this regard. Human dignity is inviolable (article 23), and extensive guarantees of equality and non-discrimination are provided (article 21). A right to effective remedy for violations of human rights is also made explicit under article 22. While the Constitution does not explicitly include the right to adequate housing, it does provide the right to social protection and social benefits.

Because access to legal remedies for violations of human rights is essential to their enjoyment, these provisions must be given effect. According to the information I have received, such is currently not the case with respect to the right to housing. A lack of jurisprudence referencing the right to housing suggests that administrative and civil courts are reluctant to invoke and apply international human rights law, despite the fact that lawyers have brought these arguments before courts.

I heard troubling examples of cases in which persons threatened with eviction were repeatedly provided with unclear or conflicting information as to whether their case would be heard by a court. I also heard of cases which were unnecessarily prolonged, or subjected to repeated review by different and sometimes parallel procedures, without a clear outcome, or with no appeal possible. Some people I met who are trying to challenge violations of their right to housing were worn down by the legal proceedings and anxious that at any moment the standing eviction order would be executed, leaving them and their families homeless. I am left with the impression that, at present, there is no effective system under the domestic legal order for ensuring the right to housing as set out under international law.

I applaud the recent creation of a multi-sectorial mechanism to ensure that treaty body recommendations are implemented. In my view, this mechanism is well placed to also disseminate and ensure implementation of recommendations from Special Procedures of the Human Rights Council. The crucial role of civil society participation in such mechanism should also be given priority.

The Ombuds Office is well apprised of international human rights law, has contributed parallel reports to international treaty monitoring bodies, and uses international human rights law and standards in its work. In principle, this institution could play a powerful role in enhancing the ability of persons and communities to
access the right to effective remedy where housing rights are concerned. However, it appears that many of its recommendations are not implemented in practice.

To ensure access to justice and legal remedies with respect to the right to housing, the following recommendations are pertinent:

- Ensure that courts apply ratified international human rights instruments when relevant to implement domestic law and that they privilege international human rights law to resolve conflicts between domestic and international standards, in particular with regard to the rights to adequate housing and non-discrimination in this context.
- Central government and the Parliament should collaborate consistently with the Ombuds Office and ensure the Ombudsperson is guaranteed an opportunity to review draft laws and other regulations and strategies to ensure compliance with Serbia’s international human rights obligations (in line with article 18 of the Law on Ombudsperson). It should also ensure that recommendations of the Ombudsperson are acted on promptly and implemented effectively in full.
- Serbia should ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP ICESCR) to enable claimants to seek justice for violations of the right to adequate housing in the international system if they are unable to secure due legal remedy in the domestic system.

3. Roma

During my visit, I have come to understand that the Roma communities of Serbia are diverse, and include some people who have been living here for centuries, as well as forcibly displaced Roma from Kosovo and other parts of former Yugoslavia. While many Roma are fully integrated, a major segment of the Roma community lives in serious situations of exclusion, without effective access to the right to housing and other related human rights.

There are reportedly 583 informal Roma settlements. This is a striking number for a country of its size and development. I understand there have been and there continue to be a number of programmes, strategies and projects intended to resolve the housing situation of Roma, and also that there are complexities that require a comprehensive approach.

Nonetheless, conditions in the settlements I visited are appalling. The authorities in Serbia provide virtually no services to the informal Roma settlements. Those that I visited were almost completely unserviced. Children play amidst garbage heaps and broken glass because garbage collection services are at best sporadic. Without public infrastructure, housing and the communal areas were both unsanitary and unsafe. I heard accounts of rats posing a significant risk to children, including in one case disfiguring a child. I was also made aware that electricity is generally not provided, and in some cases there is not even piped water. These conditions are in violation of international human rights law and standards, particularly CESCR’s general comment No. 4.

It should be noted that contrary to common stereotypes, no Roma with whom I spoke wanted to live in these deplorable conditions. Many displaced Roma had lived in adequate housing prior to coming to Serbia and they long for decent housing conditions now.

As I understand it, the majority of those who have been evicted or are facing eviction in Serbia are Roma, in particular Roma living in informal settlements. A number of Roma in Belgrade have been resettled, allegedly for what was meant to be a short period, in “mobile housing units”– literally metal shipping containers which lack any of the characteristics of adequate housing under international human rights law. Moreover, these mobile housing units are located outside the city centre, and far from where they used to live, without access to employment opportunities or other social benefits that come with living in a city.

The disproportionate number of evictions of Roma combined with the failure of the authorities to provide even the most basic services to those living in informal settlements or to guarantee legal security of tenure for residents in such settlements suggests a highly charged discriminatory policy resulting from stigma and racism against Roma.
In some cases, Roma from informal settlements have been allocated social housing. However, it was brought to my attention that some are currently threatened with eviction from this housing, due to rent or utilities arrears. In this way, social housing is hardly fulfilling its purpose – it provides no security for the most vulnerable, it fails to ensure the inclusion of those who are generally marginalized, discriminated against and excluded.

In line with this overview, I would make the following urgent recommendations:

- Local authorities, particularly in the City of Belgrade, must immediately stop evictions of Roma from informal settlements leading to segregation and substandard housing conditions, such as those involving mobile housing units. Durable, integrative housing solutions must be found.
- Central government must adopt and immediately implement a law which prohibits any level of government from the practice of forced evictions except in the most exceptional circumstances, in keeping with international human rights law. This law must also incorporate international human rights standards as found in the CESCR’s General Comment No. 7 with respect to the pre-, mid- and post-eviction process.

4. Refugees, Asylum Seekers and Displaced Persons

From the start of the break-up of the former Yugoslavia in the early 1990s to the present day, hundreds of thousands of persons from Croatia and Bosnia and Herzegovina in particular fled their homes and came to Serbia. Internally displaced persons from Kosovo are also a large number. The vast majority of persons in these groups have not gone back. I heard accounts of a regional housing program, involving a wide range of stakeholders including the Governments concerned, to resolve the housing concerns of major segments of these displaced populations.

There are housing-related questions for persons from all of these groups. The most pressing relate to ethnic Serbs, Roma, Ashkalis, Egyptians, Goranis and others from Kosovo. Of the many tens of thousands of these people living in Serbia, approximately half are subtenants or live with relatives and friends or – in the case of Roma, Ashkalis and Egyptians – live in extremely substandard informal settlements. Only one in ten own their homes. Concerns of overcrowding, insecurity of tenure, and dire conditions of living for those who are still housed in formal and informal collective centers have been raised, in addition to issues related to Roma slums discussed separately. The Special Rapporteur on IDPs visited Serbia including Kosovo in 2009 and conducted a follow-up visit in 2013. I support the recommendations from those reports.

At the same time, Serbia is a land route for asylum seekers, refugees, and migrants and is asked – in particular in the context of humanitarian crises such as the civil war in Syria – to begin seriously advancing its refugee protection framework beyond solely persons displaced as a result of conflicts in the Balkans. (Matters related to regular and Irregular migrants are summarized in the section on “invisible groups”). I recommend that asylum seekers existing accommodation be improved in accordance with refugee law.

5. Social Housing

As noted above, Serbia transferred the vast majority of its public housing stock to private ownership in the 1990s. As such, it is now beginning to develop social housing as a component of both its housing and social security policies. This is, overall, a very positive development. Serbia’s social housing framework is just emerging, which means that how it develops in the coming years will determine if and whether it will genuinely address housing needs and contribute to social inclusion.

The Law on Social Housing (2009) provides conditions for development of social housing, as a state-supported mechanism for households that are unable to secure their own dwelling due to social, economic or other reasons (article 2). Priority criteria (article 10) include: housing status, income, health status, disability, household size and assets. The Law also gives precedence to several groups, with refugees, displaced persons and Roma among them.

I met with a number of social housing beneficiaries who would otherwise be homeless, as well as local self-government engaged in the provision of social housing. They stressed the importance of this law and the development of social housing for the poorest residents.
Nonetheless, some concerns have been raised, notably in relation to the sustainability of the provision of social housing given that a seemingly small portion of its funding is embedded in the central budget and that several of the components are funded through projects with donors. Also of concern is the lack of a systematic national needs assessment against which the development of social housing can be measured.

Some residents of social housing have flagged problems of affordability, both of rent and utilities expenditures. I was troubled to learn that some persons recently placed in social housing from very marginalized circumstances rapidly fell into rent and utilities arrears and are now threatened with eviction. Unaffordability is also related to low social benefits rates which are in most cases only available for nine of twelve months of the year, compounded by a new property tax levied against homeowners and social housing tenants alike, equivalent to one month of social benefit.

A point system is used to allocate social housing. It is not clear to me that the point system is being used in a manner that adheres to human rights principles, ensuring that it is being allocated to those most in need.

Currently social housing is being rolled out as a series of freestanding projects – financed by the state and by international donors. It is unclear as to whether national standards are being adhered to. Because municipalities have different capacities and resources to engage these projects, inconsistencies in quality and services may arise.

Insofar as private developers are involved in the development of housing stock in the country, it is my view that much more can be done with the regulatory framework. For example, it could be required that a certain percentage of housing be set aside for social usage when any private developer presents plans for new development. Similarly, private developers could be required to contribute to surrounding social infrastructure in order to access permits, another aspect which Serbia might consider incorporating into its legal and policy framework as it moves toward deeper coherence in the design and implementation of housing policy.

Finally, as noted elsewhere, there is scope to improve in practice accessibility for persons with disabilities, extending accessibility requirements to all public housing, in conformity with the Convention on the Rights of Persons with Disabilities (CRPD). The social housing framework would appear to be an excellent place to begin that endeavour.

With respect to social housing I offer the following preliminary recommendations:

- Ensure national standards for all built social housing units in keeping with international human rights law principles of housing adequacy.
- Continue to develop social housing models for vulnerable populations, including by placing obligations on private developers to contribute to social housing stocks and public social infrastructure.
- Guarantee affordability in the social housing sector, including by increasing housing subsidies or establishing other mechanisms to control the price of rent and utilities in order to ensure that no person jeopardizes access to food, medicines or other fundamental expenses due to housing-related costs.
- Ensure that, as a matter of policy and practice, social housing is designed and allocated in a manner that is consistent with international human rights standards and ensures those most in need are beneficiaries.
- Extend accessibility requirements for persons with disabilities to all public housing, and ensure that they are applied in practice.
- Reform Article 2.1.1 of the Law on Property Taxes to exclude social housing tenants and others who are unable to pay the property tax levy or implement a subsidy program in this regard.

6. Invisible Populations

In Serbia, certain categories of persons are currently the focus of specific housing programmes. Among them, there are: (1) refugees, who are mostly from other parts of the former Yugoslavia; (2) internally-displaced persons (IDPs) mainly from Kosovo, and (3) Roma, primarily those living in informal settlements; mainly from Kosovo, as well as Roma from other parts of Serbia or from other parts of the former Yugoslavia. It is essential to note also that housing programmes for refugees and IDPs dominate, with comparatively little focus with respect to housing for Roma.
Other groups of people whose housing needs are urgent referred to themselves as “invisible” and for this reason their experiences are highlighted here, though a more complete picture will be provided in my final report. A human rights based approach to housing puts all disadvantaged groups and their housing needs at the centre of policy and programmatic initiatives, including by making visible those who are currently invisible.

Homelessness

There is no reliable data on the number of homeless people who are without shelter or sleeping “rough” in Serbia. In fact, measuring the true extent of homelessness seems difficult, given that the majority of those who are in fact homeless are not living on the streets or in shelters (of which there are few across the country), but rather are doubled or tripped up with family members. For women who want to leave domestic violence, the lack of sufficient shelters means that often they have to continue to live in situations of violence. Similarly, there are concerns that groups experiencing discrimination such as persons with psychosocial disabilities or LGBT persons may be at heightened risk of homelessness.

Homelessness must be treated as a significant social issue in Serbia, especially in light of the numbers of people at risk, such as those living in poverty or with low income, those without security of tenure, and those living in overcrowded situations. Shelter use suggests that homelessness is a significant issue in Serbia, with shelters operating well beyond capacity particularly in the winter months.

According to information received, to date there has been no strategic attempts to address homelessness within housing policy, programmes or law. Homelessness remains mostly hidden. In turn, I recommend that central government, in collaboration with local self-government, assess the extent of homelessness across the country and implement a strategy based in international human rights law to address it. A homelessness strategy must be incorporated into the new national housing law.

The right to housing of persons with disabilities

Serbia has not yet fully implemented a process of deinstitutionalization. According to information I received, with a few exceptions, conditions in such facilities continue to fall below any acceptable standards, for example, with residents including young infants and children being involuntarily restrained and confined. Similarly, conditions in day care centres for persons with intellectual disabilities often are of questionable quality, unaffordable or of insufficient capacity. Support for independent living and for care-givers remains inadequate as well, so deinstitutionalization could not be effectively implemented at this point.

Such conditions must be considered in light of Serbia’s international human rights obligations under the Convention on the Rights of Persons with Disabilities (CRPD), article 19 on the right to live independently and be included in the community – and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

As concerns persons with physical disabilities, Serbian law guarantees that 10% of housing be accessible for persons with disabilities. In practice, I saw no social housing which could be characterized as fully accessible. Also, rendering housing units accessible only if someone with a disability is resident, suggests that persons with disabilities do not interact with or visit persons without disabilities. Further work is required in this area.

I recommend that the central government, in coordination with local self-governments:

- Accelerate the process of deinstitutionalization albeit at a pace that ensures no one who is deinstitutionalized is rendered homeless, inadequately housed or without support and adequate care.
- Develop alternative community-based support services to reduce the number of institutionalised persons with mental and psychosocial disabilities, with a view to enabling persons with disabilities to live independently in their own homes.
- Strengthen accessibility in practice, to ensure universal access and design, in conformity with the Convention on the Rights of Persons with Disabilities.
- Improve the conditions of detention and treatment of persons with mental and psycho-social disabilities currently in psychiatric institutions and other centres.
Regular and Irregular Migrants

Serbia is increasingly a transit country for Irregular migrants to Western Europe. Many of these migrants find themselves without accommodation in Serbia and as a result have taken up residence in parks in Belgrade, for example, as well as in other places. Human rights organisations have started to report on the dire conditions of Irregular migrants in Serbia.

Questions concerning the human rights of Irregular and other migrants in Europe and external border issues are receiving serious attention on the international human rights agenda. I therefore recommend that the central government assess the matter of migrants in Serbia and develop both a short and longer term strategy with provisions regarding housing for regular and Irregular migrants, in a public, transparent and consultative manner.

Other Invisible or At-Risk Groups

Beyond the groups identified in this statement, I also heard housing related from other groups such older persons, women, and youth. A discussion of their housing concerns and relevant recommendations will be included in my final report.

7. Local self-governments

Serbia can be characterized as a centralized state. However, local self-governments play an important role in ensuring adequate housing, particularly for the most vulnerable. Some of the most interesting and creative programmes I visited were those being undertaken with the active involvement of local self-government. These include a housing programme initiated in Obrenovac for flood victims and a Pancevo housing programme for refugee residents of collective centres. While these projects are indeed positive developments, they have not managed to fully meet existing needs.

Local self-government could be better empowered to harness and expand on these promising initiatives. In this regard, I recommend that the central government improve legislation and structures regarding the decentralization of functions.

These reforms should include greater access to resources to enable local self-governments to better implement international human rights law obligations, particularly with respect to the right to housing. All reforms must be undertaken in coordination with local self-governments and other stakeholders including civil society. Local government should also be held accountable for human rights obligations, in accordance with international human rights law.

8. Conclusion

I have been left with the strong impression that Serbia is at a crossroads with respect to the implementation of the right to housing. On the one hand, there are serious and substantial obstacles to overcome – for example, systemic discrimination and exclusion, significant need for social or otherwise non-market based housing, an aging housing stock requiring rehabilitation or replacement, and grossly inadequate housing conditions in informal settlements. On the other hand, there is a commitment to develop new laws, creative ideas to address housing need have started to emerge, and international donors and agencies remain committed to improving housing in Serbia.

Whatever steps are taken now, including what overall structure, framework and vision are adopted within the legal and policy framework may very well determine whether the current housing crisis is successfully navigated or entrenched as part of the fabric of the country.

I am very grateful to have had the chance to visit Serbia during this key stage in its development, and I stand ready to work with any and all actors to support progress toward the implementation of the right to adequate housing for the most vulnerable populations in Serbia.

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Details of the visit

The Special Rapporteur is grateful to the Government of the Republic of Serbia for the invitation for this visit from 18 to 25 May. She will continue to Pristina and Mitrovica in Kosovo* on 26-27 May. The Special Rapporteur is grateful for the level of cooperation she has received from the Government at central and local levels, as well as for the contributions and insights from civil society, academia, international organizations, independent institutions including the Office of the Ombudsman, and especially grateful with the residents who have open their homes and shared their testimonies and situation with her.

During the course of her visit, the Special Rapporteur has met with government officials and technical staff at the Ministry of Foreign Affairs, the Ministry of Construction, Transport and Infrastructure; Ministry of Labour, Employment, Veterans and Social Affairs, Ministry of Finance and the Ministry of Justice. She has met with the Commissariat for Refugees and Migration, the Office for Human and Minority Rights, the Office of Kosovo and Metohija, the Office for Flood Affected Areas Assistance and Rehabilitation Office, the Republic Housing Agency. At the local levels, she has met with city Mayors and or local council members in the City of Belgrade, as well as in Pancevo, Obrenovac, Novi Pazar and Kraljevo. In Belgrade, she met with OSCE, Council of Europe, European Union, UNDP, UNOPS, UNHCR and the UN Resident Coordinator’s Office.

The Special Rapporteur wishes to thank in particular the UN Resident Coordinator and her team, as well as officials of OHCHR in Serbia for their support and assistance in planning, preparing and conducting this visit.

***ENDS***

All references to Kosovo should be understood in full compliance with the United Nations Security Council resolution 1244 of 10 June 1999.