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Communication No. 1926/2010

Decision adopted by the Committee at its 111th session (7–25 July 2014)

<i>Submitted by:</i>	S. I. D. et al. (represented by counsel, Daniela Mihailova and Bret G. Thiele, from the Equal Opportunities Association and the Global Initiative for Economic, Social and Cultural Rights, respectively)
<i>Alleged victims:</i>	The authors
<i>State party:</i>	Bulgaria
<i>Date of communication:</i>	21 September 2009 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 28 January 2010 (not issued in document form)
<i>Date of adoption of decision:</i>	21 July 2014
<i>Subject matter:</i>	Impending eviction and demolition of housing of the long-standing Roma community
<i>Substantive issues:</i>	Effective remedy; unlawful and arbitrary interference with one's home; right to equality before the law/equal protection of the law; discrimination on the ground of ethnic origin
<i>Procedural issues:</i>	Another procedure of international investigation or settlement; failure to substantiate allegations
<i>Articles of the Covenant:</i>	2, 17 and 26
<i>Articles of the Optional Protocol:</i>	2 and 5, paragraph 2 (a)



Annex

Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (111th session)

concerning

Communication No. 1926/2010*

Submitted by: S. I. D. et al. (represented by counsel, Daniela Mihailova and Bret G. Thiele, from the Equal Opportunities Association and the Global Initiative for Economic, Social and Cultural Rights, respectively)

Alleged victims: The authors

State party: Bulgaria

Date of communication: 21 September 2009 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 21 July 2014,

Adopts the following:

Decision on admissibility

1.1 The authors of the communication, dated 21 September 2009, are S. I. D., M. A. T., A. A. S., R. S. G., O. A. T., M. G. H., G. S. G., I. S. R., F. A. T., N. A. S., Y. B. K., G. Y. T., L. I. R., L. Y. M., D. M. M., S. A. K., Y. K. P., I. S. R., T. S. M., I. M. K., A. S. S., M. G. H., S. M. N., M. D. P., N. I. S., R. A. S., M. H. G., S. I. V., R. I. K., L. S. K., S. M. K., M. J. C., and K. S. P., from the Gorno Ezerovo community; and E. A. B., K. H. S., M. I. D., and Z. S. A., from the Meden Rudnik community, all Bulgarian nationals of Roma ethnicity. The Gorno Ezerovo and Meden Rudnik communities are located in the Municipality of Burgas, Bulgaria. They claim a violation by Bulgaria of their rights under articles 17 and 26, both alone and in conjunction with article 2 of the International

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanut, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Mr. Dheerujlall B. Seetulsingh, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili, Ms. Margo Waterval and Mr. Andrei Paul Zlătescu.
The text of a joint opinion of Committee members Mr. Yuval Shany and Ms. Christine Chanut (dissenting) is appended to the present Views.
The text of an individual opinion of Committee member Ms. Zonke Zanele Majodina (dissenting) is appended to the present Views.

Covenant on Civil and Political Rights in case of eviction and demolition of their houses. The Optional Protocol entered into force for Bulgaria on 26 June 1992. The authors are represented by counsel.

1.2 On 28 January 2010, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, decided not to issue a request for interim measures under rule 92 of the Committee's rules of procedure in the light of insufficient information as to the facts submitted by the authors at the time.

Facts as presented by the authors

2.1 The authors are part of the Gorno Ezerovo and the Meden Rudnik Roma communities. These communities have existed for over 50 years. During that time, the houses of each community have been de facto recognized by public authorities, including through being provided with services such as individual mail, water, sanitation and electricity.

2.2 In 2007, 52 inhabitants of the Gorno Ezerovo community and 32 households of the Meden Rudnik community received eviction orders issued by the Burgas Regional Office of the National Construction Control Directorate pursuant to article 225, paragraph 1, of the Territorial Development Act, which allowed for demolition of housing built without proper permits. The orders required the authors to demolish their own houses or have them demolished by the authorities. In the latter case the authors were expected to reimburse the cost of the demolition. According to the authors' original communication, those eviction orders were the result of property claims by private individuals over the land on which those long-standing communities resided.

2.3 On 28 May 2008, the authors filed a complaint to the United Nations Human Rights Council under its complaint procedure, and argued that they would be forcibly evicted. Evictions were halted while their communication was under consideration by the Working Group on Communications of the Council. In April 2009, the Working Group ceased its consideration of the authors' complaint.

2.4 On 8 September 2009, the Municipality of Burgas forcibly evicted 27 persons of the Gorno Ezerovo community and demolished their houses. The order was executed with the assistance of the local police, who used disproportionate force against the inhabitants. The persons were forced out of their homes and some of them were beaten. They had to leave much of their personal belongings, including furniture which was still in their homes when they were demolished. As a result, those families, which included children and elderly, were rendered homeless.

2.5 When this communication was originally submitted to the Committee, the other households of the Gorno Ezerovo community that had received eviction orders and the 32 households of the Meden Rudnik community were under imminent threat of forced eviction and demolition. As regards the Meden Rudnik community, half of the 32 houses have existed for about 20 years while the other half are newer. Later, on or about 25 September 2009, 19 families from the Meden Rudnik community were forcibly evicted and their homes demolished. None of those who have been forcibly evicted have been offered alternative housing and no meaningful consultation has taken place with the community. Although the mayor of the Burgas Municipality stated that the municipality would provide alternative housing for the families who were legally registered in Burgas and all the evicted persons complied with that requirement, no one was resettled, they thus became homeless.

2.6 There are no available effective remedies at domestic level to challenge eviction in cases where even the minimum degree of security of tenure has been denied. Notwithstanding that situation, several families attempted to bring cases before the Burgas

Administrative Court and the Supreme Administrative Court, but the eviction orders were upheld due, inter alia, to the lack of security of tenure. The Equal Opportunities Association assisted the communities to challenge the eviction orders before the Administrative Court, on the basis of international law, as the State party's law does not provide for any remedy. Likewise, other Roma communities brought cases before those courts. However, they were all rejected because, inter alia, the applicants could not prove the legal basis on which they lived in the respective plots. That demonstrates that domestic courts are unwilling or unable to protect effectively the international human rights at issue in this communication.

The complaint

3.1 The authors submit that they are victims of a persistent pattern of racial discrimination against the Roma population. As a consequence, Roma communities, such as the Gorno Ezerovo and Meden Rudnik communities, have been forced to settle in informal settlements (e.g. "unlawful buildings"). Discrimination results in lack of education and employment opportunities necessary to afford housing at market rates. They refer to the concluding observations of the Committee on Economic, Social and Cultural Rights, stating that "success has not been achieved" in the State party's efforts to combat unemployment and "deplor[ing] the situation where those who are employed receive salaries which do not allow them to secure for themselves and their families an adequate standard of living".¹ Another cause of urban informal settlements is that rural Roma have been forced to seek employment opportunities in urban areas since they have been essentially displaced from rural land. They refer to the concluding observations of the Committee on Elimination of Racial Discrimination, pointing out that "rural Roma are discouraged from claiming land to which they are entitled under the law disbanding agricultural collectives".²

3.2 The State party has denied the Gorno Ezerovo and Meden Rudnik communities any security of tenure, including the minimum "degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats"³ required by its international and domestic human rights obligations. Their attempts to bring their cases to the Burgas Administrative Court were useless. The eviction and demolition orders were upheld by the Burgas Administrative Court and the Supreme Administrative Court.

3.3 The forced evictions and threatened forced evictions amount to a violation of article 17, read in conjunction with article 2, of the Covenant. The Committee has previously stated in concluding observations 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"⁴ and that the State party concerned should "ensure that evictions from settlements do not occur unless those affected have been consulted and appropriate resettlement arrangements have been made".⁵

3.4 The authors claim that the threatened forced eviction of the Gorno Ezerovo and Meden Rudnik communities 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 as informed by general

¹ Concluding observations of the Committee on Economic, Social and Cultural Rights on the third periodic report of Bulgaria (E/C.12/1/Add.37), paras. 13–14.

² Concluding observations of the Committee on the Elimination of Racial Discrimination: Bulgaria (CERD/C/304/Add. 29), para. 8.

³ Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing, , para. 8 (a).

⁴ Concluding observations of the Human Rights Committee on the second periodic report of Kenya (CCPR/CO/83/KEN), para. 22.

⁵ Ibid.

comments Nos. 4 (1991) on the right to adequate housing and 7 (1997) on forced evictions of the Committee on Economic, Social and Cultural Rights, and that those general comments provide persuasive authority for defining the prohibition on forced evictions under international law, including the International Covenant on Economic, Social and Cultural Rights. Therefore, since forced evictions as such are contrary to the International Covenant on Economic, Social and Cultural Rights, they amount to unlawful interference with the home and are thus also in violation of article 17 of the International Covenant on Civil and Political Rights.

3.5 The authors argue that the forced evictions are also arbitrary and are undertaken in a racially discriminatory manner, based on the Roma ethnicity of the Gorno Ezerovo and Meden Rudnik communities. The evictions have both an unlawful discriminatory intent and an unlawful discriminatory effect.

3.6 The authors refer to Council of Europe recommendation Rec(2005)4 on improving the housing conditions of Roma and Travellers in Europe, adopted on 23 February 2005, and submit that the recommendation should be used as persuasive authority in interpreting article 17 of the Covenant. Any contravention of the recommendation would amount to an unlawful interference with the home. Based on the foregoing, the authors claim that the threatened forced eviction at stake in this communication should be deemed unlawful as well as arbitrary and consequently in violation of article 17 of the Covenant.

3.7 The authors claim that the forced evictions and threatened forced evictions amount to a violation of article 26, read in conjunction with article 2 of the Covenant. By virtue of article 5(4) of the Constitution of Bulgaria, the rights enshrined in the Covenant and other treaties ratified by Bulgaria are directly binding within its domestic legal framework. Article 26 requires that the rights guaranteed by article 17 of the Covenant be guaranteed without discrimination on account of Roma ethnic origin, as well as guaranteeing the equal protection of article 17 of the Covenant. The causes for the communities of Gorno Ezerovo and Meden Rudnik being informal settlements or “unlawful buildings”, as described by the Regional Agency for Control of Unlawful Building, are due in large part to the persistent pattern of racial discrimination against Roma and the unwillingness of the State party to fulfil the right to adequate housing.

3.8 The State party has ratified the Covenant on Economic, Social and Cultural Rights and, therefore, the rights guaranteed thereunder are directly binding within its domestic legal framework, including the right to adequate housing, and the prohibition on forced eviction, enshrined in article 11 thereof. Article 11 of the International Covenant on Economic, Social and Cultural Rights, read in conjunction with article 2, obliges the State party to respect, protect and fulfil the right to adequate housing without discrimination. Under the International Covenant on Economic, Social and Cultural Rights, 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. 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 to⁶. Finally, and even if the due process criteria have been satisfactorily met, evictions cannot be carried out in a discriminatory manner, nor can they result in rendering individuals homeless or vulnerable to the violation of other human rights. In the authors’ case, the authorities did not carry out any process of consultation to explore feasible alternatives to eviction. The State party could provide compensation to the ostensible owners of the land in question and then meet its obligation to respect, protect and fulfil the right to adequate housing by regularizing the communities of Gorno Ezerovo and Meden.

⁶ The authors refer to general comment No. 7 (1997) on the right to adequate housing: forced evictions, para. 15.

3.9 The authors conclude that the State party is in violation of article 26 of the International Covenant on Civil and Political Rights for not prohibiting discrimination on account of Roma ethnic origin, not providing for the equal protection of article 17 of the Covenant or for the equal protection of the rights enshrined in the International Covenant on Economic, Social and Cultural Rights, including the right to adequate housing and the prohibition of forced eviction.

3.10 The authors add that remedies should include housing and land restitution as well as compensation for those forcibly evicted. They should also include the regularization of the communities of Gorno Ezerovo and Meden Rudnik, including the provision of a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. All remedies should be implemented with the genuine and meaningful participation of those communities.

State party's observations on admissibility and merits

4.1 On 26 March 2010, the State party submitted its observations on admissibility and merits of the communication and requested the Committee to declare it inadmissible pursuant to rule 96 (c), (e), and (f), of the Committee's rules of procedure.

4.2 The State party draws the Committee's attention to the fact that in October 2009 the authors of the communication also submitted similar claims under the special procedures of the Human Rights Council, namely, 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 Independent Expert on minority issues; and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. The State party submitted its comments to those mandate holders. At the time at which the State party provided its observations to the Committee, the response of the mandate holders was still pending. Thus, the communication should be declared inadmissible pursuant to rule 96 (e) of the Committee's rules of procedure.

4.3 Further, on 28 May 2008, the authors of the present communication submitted a complaint under the Human Rights Council's complaint procedure, which was discontinued by the Council's Working Group on Communications on 16 April 2009. All those submissions were very similar and even reproduced the same statements of fact and allegations contained in the communication filed before the Committee. This leads to the conclusion that almost at the same period of time the authors submitted the very same arguments and facts to different proceedings. Such controversial practices do not conform to rule 96 (c) of the Committee's rules of procedure and, consequently, should not be encouraged since it amounts to an abuse of the right of submission.

4.4 As regards exhaustion of domestic remedies, the State party notes that only four of the authors, Mr. S. I. D., Ms. G. Y. T., Ms. L.Y. M., and Ms. L. I. R., challenged the decision of the Administrative Court of Burgas before the Supreme Administrative Court. The other authors of the communication have neither exhausted the domestic remedies, nor even availed themselves of them. Thus, the State requests the Committee to declare the communication inadmissible for failure to exhaust domestic remedies pursuant to article 5, paragraph 2 (b), of the Optional Protocol to the Covenant.

4.5 With relation to Mr. S. I. D.'s case, the judgments indicate that he challenged the National Construction Control Directorate's order No. 39, on the removal of an unlawful construction work located in regulated Lot I in section 1 according to the plan of the Quarter of Gorno Ezerovo (38 Minzouhar Street) before the Administrative Court of the City of Burgas. He claimed that the execution of that order would put him in dire social straits since he was unable to procure another home and had a large family. Later, within the proceeding, he claimed that the construction work was tolerable within the meaning given by section 16 (3) of the Supplementary Provisions of the Territorial Development

Act. On 11 June 2008, the Administrative Court dismissed the author's claim as the construction work concerned had been performed in 1999 on a plot belonging to the municipality, without legal grounds for its occupation, building authorization or construction file. Likewise, it held that the Mr. S.I.D.'s objection that the construction work was tolerable was also unfounded. Therefore, the construction was held to be unlawful pursuant to items 1 and 2 of article 225 (2) of the Act. The judgement also indicated that the arguments about dire social straits, in connection with the lack of income to purchase another home and about the large size of the family, could not refute the conclusion arrived at about the existence of unlawful construction work. In October 2008, the Administrative Supreme Court dismissed the author's cassation appeal and confirmed the Administrative Court of Burgas' judgement, as the author had failed to produce evidence on the lawfulness of the construction.

4.6 The State party submits that the principle of equality of all citizens before the law is set forth in article 6 (2) of the Constitution of Bulgaria and the basic law does not allow for any limitation of rights nor for any privileges whatsoever on the basis of race, nationality, ethnic identity, sex, origin, religion, education, convictions, political affiliations, personal or social status. In its Interpretative Judgement No. 14 of 1992, the Constitutional Court ruled that "equality of all citizens before the law" within the meaning given by article 6 (2) of the Constitution signified equality before all legal acts. The Protection against Discrimination Act adopted in 2003 defined the types of prohibited discrimination, specified the procedures and the bodies for protection against discrimination.

4.7 The authorities' policy regarding the Roma community is based on the Framework Programme for Equal Integration of Roma in Bulgarian society, adopted by Council of Ministers decision in 1999. Section IV, "Territorial structure of the Roma neighbourhoods", of the Framework Programme stipulates that the separated Roma neighbourhoods, most of which are situated outside the respective city plans and do not have an adequate infrastructure, are one of the most serious socioeconomic problems of the community. The State party also refers in this context to the National Programme for the Improvement of the Housing Conditions of Roma in Bulgaria (2005-2015).

4.8 A number of projects aimed at improving the situation of members of the ethnic groups, with a special focus on Roma, have been implemented and are being implemented in the context of compliance with the criteria for membership of the European Union. Those projects are financed under the Programme of Community aid to the countries of Central and Eastern Europe (Phare) of the European Union, by the Council of Europe Development Bank, under the national budget through the budget of the Ministry of Regional Development and Public Works and through the budgets of a number of municipalities. Roma integration activities, including projects implemented by non-governmental organizations and financed from national or external sources, are subject to constant monitoring.

4.9 The Commission on Roma Integration has been established within the National Council for Cooperation on Ethnic and Demographic Issues, which is an advisory and coordinating body under the Council of Ministers. The government institutions must consult the Council for Cooperation on proposals concerning ethnic and demographic issues, of which the policy for equal integration of Roma in Bulgarian society forms a substantial part.

4.10 Since 1990 there has been the possibility to legalize all unlawful buildings that conformed to statutory requirements and possessed the relevant technical specifications. Any building for which no application for legalization was submitted until 26 January 2004 or for which the legalization request was refused, is subject to removal. This, however, is not carried out automatically and without prior notice. For instance, the mayor of the municipality should submit a motion to the respective municipal council regarding the

unlawful residential units which pose a habitation hazard or in case ownership is to be returned in accordance with courts' decisions.

4.11 As regards the illegal construction of houses in the districts of Gorno Ezerovo and Meden Rudnik, in the Municipality of Burgas, the State party notes that the actions taken by the Municipal Administration in Burgas and the Regional Office of the National Construction Control Directorate for the restoration of legality were supported by the population of the affected areas as well as by the rest of the residents of the city of Burgas. In 2004, the Municipality conducted an inspection pursuant to its Council's resolution of 30 March 2004, about its duties to exercise control over construction activities. The inspection identified 44 unlawful construction works and 10 light structures outside the regulation boundaries of the district of Gorno Ezerovo, as well as 21 unlawful construction works and 21 light construction units in the territory of the district of Meden Rudnik, on municipal land tracts allotted for a street and a private-owned land tract. The buildings were entirely of ramshackle and semi-solid structures, most built of makeshift and depreciated materials. They were deficient in water supply and sewerage and abstracted electricity illegally by means of overhead cables. They were also unhygienic and the surrounding areas were strongly polluted, creating conditions for the outbreak of epidemics and the spread of infections. The areas bordered on quarters inhabited by the Roma population which had been in existence for over 50 years.

4.12 In respect of the light structures, an administrative proceeding was instituted by the Municipality of Burgas, according to the procedure established in article 179 of the Territorial Development Act in force at that moment. That proceeding concluded with the coercive removal of those structures.

4.13 With regard to the unlawful construction works, in 2004, the Municipality of Burgas informed the Burgas Regional Office of the National Construction Control Directorate about the illegal construction, for it to take steps under the Territorial Development Act and the Ministry of Regional Development and Public Works' Ordinance No. 13 of 2001, on coercive enforcement of orders for removal of unlawful construction works. The Burgas Regional Office initiated proceedings pursuant to item 1 of article 225 (1) of the Territorial Development Act and issued orders for removal on the grounds of lack of ownership and absence of the required construction file. The State party submits that the administrative proceedings lasted nearly three years and that during that time the Municipality and the Directorate had examined carefully each particular case, notified the parties concerned in advance of all steps taken according to the established procedure, through written statements, orders, memorandums, voluntary compliance invitations, notifications, and other documents. Further, the enforcement of the orders was repeatedly deferred by the authorities in 2007 and 2008, and finally they were executed two to five years after their issuance, between 8 and 24 September 2009. A total of 21 and 42 unlawful construction works were identified in the districts of Meden Rudnik and Gorno Ezerovo, respectively. All the owners were given a last chance to comply voluntarily within 30 days. Twenty-three occupants moved by themselves. No person was evicted from his or her home by force, no personal belongings were left in the demolished structures nor were they coercively removed to municipal storage.

4.14 During the execution of the orders, there was no threat to the life or health of the persons concerned. On 8 September 2008, before the demolition of the unlawful construction works had started in the district of Gorno Ezerovo, the police were compelled to resort to force in order to halt an assault by a group of residents. In that confrontation, a police officer was injured by a stone. Therefore, the State party argues that there was not a disproportionate use of force by the police against the Roma inhabitants during the execution of the eviction and demolition orders.

4.15 The State party further submits that according to the Municipality of Burgas, the persons removed from the demolished buildings returned to their previous dwellings located within the quarters bordering on the vacated development area and populated by a compact Roma population, whereas two or three persons moved to a different part of the country, outside the Municipality.

4.16 The State party submits that the execution of the eviction order issued by the Burgas Regional Office of the National Construction Control Directorate was the last resort to solve the issue of unlawful construction works, after numerous other attempts taken by the municipal and national authorities within the administrative proceedings that had lasted nearly three years. Therefore, the authors' claim of forced eviction in violation of the Covenant is unsubstantiated.

Authors' comments on the State party's observations

5.1 On 30 June 2010, the authors commented on the State party's observations. They argue that the present communication should be declared admissible, since the international procedures invoked by the State party, namely 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 contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Independent Expert on minority issues do not fall within the scope of the "procedure of international investigation or settlement" referred to in article 5, paragraph 2 (a), of the Optional Protocol or in rule 96 (e) of the Committee's rules of procedure. Likewise, the complaint procedure of the Human Rights Council is not within the scope of the requirement under this provision and, even it was, the Working Group on Communications of the Council ceased consideration of the matter in April 2009. Therefore, the Committee is not precluded from considering their communication.

5.2 As to the exhaustion of domestic remedies, the authors note that the State party acknowledges in its observations that four of them have appealed against the decision of the Administrative Court of Burgas before the Supreme Administrative Court. The Supreme Administrative Court's decisions in these cases demonstrate that domestic remedies are neither adequate nor effective. According to the Committee's jurisprudence, there is no requirement to use a remedy which offers no possibility of redressing the situation, for instance, where it is clear from the outset that the law which the local court would apply can lead only to the rejection of any appeal.

5.3 On the merits, the authors reiterate that the remedy for enforcing property rights cannot lawfully be implemented by carrying out a violation of human rights, particularly when the reason for the informal residency status is due to unwillingness or inability of the State party to fulfil the right to adequate housing without discrimination. In this regard, the authors request the Committee to take guidance from the jurisprudence of the European Committee of Social Rights.⁷

5.4 Evictions can only be justified in exceptional circumstances and after all feasible alternatives have been explored in meaningful consultation with the persons affected.⁸ In the present case, this process was not followed and the authorities did not consider feasible alternatives which would not entail violations of the authors' rights. For instance, the State

⁷ The authors refer to *European Roma Rights Center v. Bulgaria*, complaint No. 31/2005, decision on the merits of 18 October 2006, para. 53 and conclusion; and *INTERIGHTS v. Greece*, complaint No. 49/2008, decision on the merits of 11 December 2009, para. 60 and conclusion.

⁸ The authors refer to the Committee on Economic, Social and Cultural Rights general comments Nos. 4 (1991) and 7 (1997).

party could provide compensation to the ostensible owner of the land in question and then meet its obligation to respect, protect and fulfil the right to adequate housing by regularizing the communities of Meden Rudnik and Gorno Ezerovo, including by providing the communities with a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.

5.5 Even if it is concluded that exceptional circumstances justified those evictions and that all alternatives had already been explored, the authors submit that the State party failed to observe due process of protection as established in general comment No. 7 of the Committee on Economic, Social and Cultural Rights, by not providing an opportunity for genuine consultation with those affected, the provision of legal remedies and the provision, where possible, of legal aid to seek redress from the courts. Therefore, the authors reiterated that those evictions had a discriminatory effect on the Roma minority population and families were indeed rendered homeless.

5.6 On 13 February 2013, the authors submitted further information to the Committee. They welcomed the Committee's Views concerning communication No. 2073/2011, *Naidenova et al. v. Bulgaria*, and pointed out that the reasoning of the Committee was also applicable to their situation. The present communication differed in that some authors had already been evicted and that the communities at issue were ostensibly on private land. However, the authorities had yet to determine any actual ownership of the land. The absence of a process to determine actual ownership of the land in question demonstrated the lack of urgency in determining such ownership and was further evidence that the evictions that had been executed were unnecessary and that those pending should not be carried out. Any dispute regarding the private property issue must be solved in a way that, at a minimum, did not violate human rights. If needed, remedies should be crafted in such a way that furthers human rights, such as compensation to any ostensible owner upon proof of valid ownership while allowing the Roma communities to remain in place with security of tenure and plans for improved housing conditions.

Additional information provided by the parties

6.1 At the request of the Committee,⁹ on 23 October 2013 and 7 February 2014, the State party submitted further information. The State party submitted that the proceedings concerning the constructions in Gorno Ezerovo residential area were initiated in connection with an application filed with the Ministry of Regional Development Public Work on 8 April 2003 by Mrs M.V.R. According to the inspection conducted by the Municipality of Burgas, the construction work was carried out in 1999–2000. The proceedings concerning the Meden Rudnik area were initiated in 2004 by the Municipality due to the multiple complaints from citizens living in the vicinity about illegal constructions, and from the

⁹ On 18 July and 29 October 2013, the Committee requested the State party and the authors, respectively, to provide further information, with supporting evidence wherever possible, on the merits of the communication. In particular, they should inform the Committee about the length of time that the Gorno Ezerovo and the Meden Rudnik communities had occupied the plots of land where they were situated as well as the length of time that each of the authors had lived in the houses or sites from which they were evicted or were threatened to be evicted; whether the lands and constructions occupied by the authors were public or private property; whether the houses were provided with services such as mail, water, sanitation and electricity; what concrete reasons led the Regional Office of the National Construction Control Directorate to order the eviction and the demolition of the authors' houses; what concrete steps were taken by the Burgas Municipality and the Regional Office before the enforcement of the eviction orders to ensure that the persons would not be severely affected; and what concrete alternatives were offered to them to palliate the effects of the enforcement of the eviction orders.

owners of a private property that had been built on without consent. After consultation with the cadastral and zoning plans, it was found that those constructions were made after 1997.

6.2 In both cases, the constructions were located in the periphery of the areas inhabited mainly by Roma people. The constructions in the Gorno Ezerovo residential area were built on the border and outside the neighbourhood. Sixteen buildings were located in properties owned by the municipality and 23 buildings in properties intended for agricultural use owned by individuals and located outside the zoned area of the neighbourhood. As regards Meden Rudnik, the constructions were located in 11 properties owned by the municipality, including one intended for construction of a street, and in eight properties returned to private owners by decision of the Land Commission in 1993.

6.3 The demolished buildings were unsightly, without a sewerage system, and had illegal water and electricity supply. In most cases, those buildings were in danger of collapse and did not meet the Territorial Development Act's sanitary and hygienic requirements for residential buildings.

6.4 The Municipal Administration of Burgas adopted an ordinance pursuant to article 45 a of the Municipal Property Act of 2004, which allows persons affected by the execution of demolition orders to obtain benefits in order to respond to their housing needs and to accommodate them in municipal housing against a rent. Nevertheless, only three persons from the Meden Rudnik area requested such benefits. On 26 September 2009, the Municipality of Burgas granted one of them and her family accommodation in municipal housing against rent. The other two persons did not meet the requirement for accommodation provided by the municipality and therefore their requests were refused.

7.1 Pursuant to the Committee's request, on 21 January 2014 the authors submitted further information. They reiterated that the Gorno Ezerovo and the Meden Rudnik communities had existed for more than 50 years. All of them were born there. Some of the houses were built as extensions of an existing house. Further, according to information given by the Burgas Municipality to the Regional Roma Union, the land on which the houses were built was municipal property.

7.2 Most of their houses were provided with water and electricity and the authors received their bills for water and electricity consumption monthly by regular mail from the local water and electricity companies. They were registered at the addresses where they lived and received correspondence at the addresses.

7.3 The authors submitted that the actual reason for the issuing of the eviction orders was that their houses were built on the coast, on land of high commercial value. The Municipality decided to evict them in order to sell that land to construction companies that wanted to build large modern sea resorts. The Roma families were seen as an obstacle to that goal.

7.4 In Meden Rudnik and Gorno Ezerovo communities there were about 1,500 and 2,000 Roma persons, respectively, who lived in overpopulated houses. Most of them were unemployed and made their living by gathering goods from the local dunghill. They lived below the minimum subsistence level and lacked information on the conditions for applying for municipal housing. After the evictions order came into force, 19 and 52 houses were demolished in Meden Rudnik and Gorno Ezerovo, respectively. The affected persons did not receive alternative accommodation. Most of the evicted persons were accommodated by their relatives and neighbours; some of them built new houses on the same place as where the old ones had been demolished. The municipality refused to register them as living at addresses that it regarded as unlawful, and without such documentation they could not apply for municipal housing. For the same reason, many of them, including almost all the authors, could not get new identity cards as they could not present a municipal certificate of permanent address before the local Directorate of the Ministry of

Interior. Therefore, owing to that fact, many of the authors did not meet the municipal criteria for registration and only six families were successfully registered. However, only one of them received municipal housing.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

8.2 With regard to the requirement laid down in article 5, paragraph 2 (a), of the Optional Protocol, the Committee takes note of the State party's argument that the authors of the present communication have submitted similar claims to the complaint procedure of the Human Rights Council; 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 Independent Expert on minority issues; and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

8.3 In this regard, the Committee recalls that extraconventional procedures or mechanisms established by the Human Rights Council, to examine and publicly report on human rights situations in specific countries or territories or on major phenomena of human rights violations worldwide, do not constitute a procedure of international investigation or settlement within the meaning of article 5, paragraph 2 (a), of the Optional Protocol to the Covenant. The study of human rights problems of a more global character, although it might refer to or draw on information concerning individuals, cannot be seen as being the same matter as the examination of individual cases within the meaning of article 5, paragraph 2 (a), of the Optional Protocol.¹⁰ Accordingly, the Committee considers that it is not precluded, for purposes of admissibility, by article 5, paragraph 2 (a), of the Protocol, from examining the communication.

8.4 The Committee observes that the authors' original communication addressed in general terms the decades-long existence of the Meden Rudnik and Gomo Ezerovo communities and the association of the authors and the houses they occupied with those communities. Nevertheless, it appears from the information submitted by the State party that some of those houses had been constructed quite recently when the municipality was objecting to their unauthorized construction, and that some of those houses were built on land that had not previously been occupied by the two communities. It also appears that some of the land on which the houses were built was privately owned, and that the owners were interested in recovering possession of the land. Because those factors, among others, are relevant to an analysis of whether the State party's interference with the authors' occupation of the land was arbitrary, the Committee requested the State party and the authors' counsel to address specifically the length of time that each of the owners had lived in the houses or sites from which they had been evicted or were threatened with being evicted, as well as whether the lands they occupied were public or private property. The Committee also requested information concerning provision to those houses of services such as mail, water, sanitation and electricity, which the communication had described as constituting de facto public recognition of the authors' occupancy of the sites. The Committee requested that the authors provide, wherever possible, supporting evidence relating to their explanations.

¹⁰ See communication No. 1495/2006, *Madoui v. Algeria*, Views adopted on 28 October 2008, para. 6.2.

8.5 Despite the Committee's request, the authors have provided only generalized responses to its questions. The response does not explain which of the authors have occupied land owned by the municipality and which have occupied privately owned land, and it does not explain how long each of the authors has occupied the particular challenged sites. It does not identify which of the authors received the alleged services, and it does not provide any evidence in support of this allegation with regard to any of the authors. The absence of specific information does not relate merely to the attachment of names to the authors' particular situations, but rather it prevents the Committee from obtaining an adequate description of any of their particular situations. In these circumstances, the Committee concludes that the authors have not sufficiently substantiated their claims under article 17, read alone and in conjunction with article 2 of the Covenant, for purposes of admissibility, and finds them inadmissible under article 2 of the Optional Protocol.

8.6 In relation to the alleged violations of article 26, read alone and in conjunction with article 2, of the Covenant, that the State party has failed to respect the equal protection and non-discrimination principles by threatening or carrying out forced evictions and demolition of housing against the authors, on the ground of their Roma ethnic origin, the Committee considers that these claims have been insufficiently substantiated, for purposes of admissibility. It further remains unclear whether these allegations were raised at any time before the State party's authorities and courts. In these circumstances, the Committee considers that these claims of violation are inadmissible under article 2 of the Optional Protocol.

9. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 2 of the Optional Protocol;
- (b) That this decision shall be communicated to the State party and to the authors.

Appendices

Appendix I

Joint opinion of Committee members Mr. Yuval Shany and Ms. Christine Chanet (dissenting)

1. We agree with the Committee that the authors have not sufficiently substantiated their claim that the State party failed to respect their security of tenure in carrying out forced evictions and in demolishing the dwellings they occupied. We also agree that the authors failed to substantiate their claim that disproportionate force was used during the evictions and that personal belongings were lost in the demolition process. Still, we disagree with the Committee's conclusion that the State party did not violate article 17 of the Covenant.

2. The qualification of forced evictions as arbitrary interferences in the home under article 17 of the Covenant depends not only on whether the evicted individuals had valid property rights in the dwellings in question, but also on whether due regard was given by the State party to the possible consequences of the evictions for the evicted individuals.¹ Whereas in some cases, involving extended periods of residence in the relevant dwellings, the State party may be required to provide evicted individuals with long-term alternative housing solutions, in other cases, involving shorter periods of residence, it may suffice for the State party to show that it adopted modest measures, such as offering evicted individuals short-term housing solutions or considering their needs under general programmes for social housing available in the State.

3. We note that the authors claimed that the vast majority of evicted individuals did not receive alternative accommodation, and that, due to the unofficial status of their dwellings, many residents, who have been living there for a number of years, could not obtain the documentation needed to apply for municipal housing. As a result, the authors maintained that only six families were able to register successfully with the municipal authorities and that only one family obtained municipal housing. The information provided by the State party to the Committee did not contradict any of these claims of the authors. Rather, the State informed the Committee that only a handful of residents applied for municipal housing and that just one family was resettled in the municipality of Burgas.

4. Since the State party did not provide the Committee with information about the specific housing solutions that were considered for each of the authors, nor did it negate the claim that many of the authors were barred from applying to municipal housing due to the unofficial status of their dwellings, we are of the view that the State party failed to show that due regard was given to the consequences of the forced evictions, and, in particular, to the alternative housing needs of the evicted individuals and to the unique difficulties emanating from their unofficial status.² As a result, the State party conducted itself in the circumstances of the case in a manner that appears to be indifferent to the consequences of the evictions and to the alternative housing needs of the authors. The failure to show due

¹ Communication No. 2073/2011, *Naidenova et al. v. Bulgaria*, (CCPR/C/106/D/2073/2011) (2012), para. 14.6. Cf. *Winterstein v. France*, judgement of the European Court of Human Rights of 17 October 2013, para. 159.

² CCPR/C/106/D/2073/2011 , para. 14.6.

regard to the possible consequences of the forced evictions renders the eviction of the authors an “arbitrary interference” in their homes in violation of article 17 of the Covenant.

Appendix II

Individual opinion of Committee member Ms. Zonke Zanele Majodina (dissenting)

1. I cannot agree with the Committee's conclusion "that the authors have not sufficiently substantiated their claims under article 17, read alone and in conjunction with article 2 of the Covenant, for purposes of admissibility, and finds them inadmissible under article 2 of the Optional Protocol".

2. In the first place, the Committee has missed an opportunity to reinforce its views in the earlier communication of *Naidenova et al. v Bulgaria*, No 2073/2011, where it concluded "that the State party would violate the authors' rights under article 17 of the Covenant if it enforced the eviction order of 24 July 2006 so long as satisfactory replacement housing is not immediately available to them". Notwithstanding minor differences in the factual background of these two cases, both make a claim, inter alia, of a violation of the sanctity of the home, within the meaning of article 17. The Committee, in its general comment on article 17 states that even where forced eviction is provided by law, as in the present case, it should not be arbitrary and should be reasonable in particular circumstances in accordance with the provisions, aims and objectives of the Covenant. Furthermore, the concluding observations of the Committee make it clear that State parties should ensure that forced evictions are only undertaken when affected populations have been consulted and appropriate settlement arrangements have been made.

3. The facts as presented in the present case do not indicate that meaningful consultations took place before 52 inhabitants of the Gorno Ezevoro community and 32 households of the Meden Rudnik community received eviction orders. After the eviction orders had come into force, 52 houses in Gorno Ezevoro and 19 houses in Meden Rudnik were demolished. The authors were notified through written statements, orders, memorandums and voluntary compliance notifications for a period ranging from 2 to 5 years, following which they were given a last chance to comply within 30 days. None of those measures amount to meaningful consultations nor were any efforts made by the authorities to provide alternative arrangements or indeed compensation to the Roma families affected.

4. In a situation where no alternative housing was made available, the consequence was that families lost their homes. This amounts to arbitrary interference with the home and a violation of article 17. Such interference affects not only the homes of affected Roma families but their private and family lives.

5. The Committee further equates the Roma communities in Gorno Ezevoro and Meden Rudnik with ordinary settled communities by reference to such questions as whether the lands occupied by these families were public or private, public recognition of the owners' occupancy and supporting evidence relating to recognition of owners' property rights. This does not take into account that the illegal Roma settlements have been in existence for many years with some form of provision of public services and acquiescence by the authorities. All the same, the particular living conditions under which the affected families occupied their houses did not make it possible for them to acquire security of tenure under the relevant municipal laws, making it almost impossible to redress the particular situation of those families.

6. The European Court of Human Rights clearly recognized the problem of lack of legal security when it unanimously ruled in a similar case, *Yordanova and others v. Bulgaria* (25446/06, 24 April 2012) that threatened forced eviction of a long-standing

Roma community, notwithstanding its informal tenure would be a violation of its provisions under article 8 of the European Convention on Human Rights, the equivalent of article 17 of the Covenant.

7. By reaching the conclusion that the authors in this case have insufficiently substantiated the facts for purposes of admissibility, the Committee has foreclosed the possibility of analysing and assessing, on the merits, the claim of a violation by underprivileged minority Roma communities deprived of a fundamental right guaranteed under the International Covenant on Civil and Political Rights.
