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COMBINED REPORT OF THE CA COUNTRIES ON THE OBSERVANCE OF HUMAN RIGHTS IN THE PROCESS OF EXPROPRIATION OF DWELLING FOR PUBLIC AND STATE NEEDS

(REPORT NO. 1, CA NETWORK “RAH”)

# SUMMARY

The report examines the legislative framework and law enforcement practices of 4 countries of Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan) in matters related to forced evictions and expropriation of housing for public and state needs. The report brings together the results of studies of 4 Central Asian (CA) countries and this is the first publication in the Central Asian region in the field of eviction and dispossession of housing. These issues are considered in the context of compliance with international norms in three separate stages: before eviction, during eviction and after eviction. The analysis of compliance of the legislation and practices in the CA countries with international norms was carried out on the basis of the set of “Basic principles and guidelines on development-based evictions and displacement”, which in 2006 was presented by the special rapporteur on adequate housing, Mr. Miloon Kothari, to the Human Rights Council.[[1]](#footnote-2)

These guidelines aim to assist States in developing policies and legislation to counter forced evictions at the national level. Thus, this report helps to answer the question: to what extent the Central Asian countries, in the implementation of the housing rights of citizens in the course of the expropriation of housing, were guided by the basic principles and guidelines of the UN Special Rapporteur.

This report does not claim to be either a complete consideration of all aspects of the problem posed, or scientific evidence. The report is interesting in that the researchers found new evidence for the subject of the study, confirmed their hypotheses that they had initially, before it was written.

The publication demonstrates the practicality and unique experience of joint research of human rights NGOs in Central Asia. The authors hope that this publication will contribute to the realization of human rights to adequate housing in Central Asia and will be useful to those who are interested in preventing forced evictions and dispossession of housing.

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The report used the results of studies on forced evictions and expropriation of housing for public and state needs conducted in four countries of Central Asia: Kazakhstan, Kyrgyzstan, Uzbekistan and Tajikistan. Despite the uniformity of the methodology, the studies in each country were carried out independently by local NGOs and members of the CA network “Right to Adequate Housing”. In Kazakhstan, Kyrgyzstan and Uzbekistan, the work was carried out within the framework of the project “Strengthen the Right to Housing” with financial support from USAID \ ARGO program: “Partnership for Innovation - P4I”. The study in Tajikistan was carried out with support from the Open Society Institute Assistance Foundation in Tajikistan.

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# LIST OF ABBREVIATIONS

|  |  |
| --- | --- |
| **AC** | Administrative Code |
| **CA** | Central Asia |
| **CC** | Civil Code |
| **CERD** | Committee on the Elimination of Racial Discrimination |
| **CESCR** | UN Committee on Economic, Social and Cultural Rights |
| **DIA** | Department of Internal Affairs |
| **FGD** | Focus group discussion |
| **GBAO** | Gorno-Badakhshan autonomous Oblast (Mountain-Badakhshan AO) *Го́рно-Бадахша́нская автоно́мная о́бласть* |
| **JK** | Jogorku Kenesh (Parliament) of the Kyrgyz Republic |
| **KR** | Kyrgyz Republic |
| **LC KR** | Land Code of the Kyrgyz Republic |
| **LLC** | Limited Liability Company (*ООО, ОсОО*) |
| **NGO** | Non-Governmental, non-commercial/non-profit Organization |
| **NSC** | National Security Committee |
| **ODIHR** | Office for Democratic Institutions and Human Rights |
| **PA** | Public Association (NGO) |
| **PF** | Public fund (NGO) |
| **RAH** | Right to Adequate Housing |
| **RK** | Republic of Kazakhstan |
| **RT** | Republic of Tajikistan |
| **RUz** | Republic of Uzbekistan |
| **SC RK** | Supreme Court of the Republic of Kazakhstan |
| **SGLA** | State Guaranteed Legal Aid(*GGUP-ГГЮП*) |
| **SUE** | State Unitary Enterprise (*GUP*-*ГУП*) |
| **UN** | United Nations |
| **UPR** | Universal Periodic Review |
| **USAID** | US Agency for International Development |

# DEFINITIONS

* ***Forced eviction***

Forced eviction is “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”.[[2]](#footnote-3)

* ***Expropriation (buying-out) of housing for public and state needs***

Alienation of property for state or public needs is the **expropriation** of a land plot or other immovable property belonging to individuals or non-state legal entities in connection with the expropriation of a land plot for state and public needs in exceptional cases provided for by the legislation of the countries, subject to equivalent compensation and the conclusion of a bilateral agreement.[[3]](#footnote-4) Forced evictions have long been recognized as a gross violation of human rights.

* ***Displaced person***

A displaced person is a person who, as a result of the actions of the authorities, has been deported from, or has been obliged to leave, his country of nationality or of former habitual residence, or who were deported for racial, religious or political reasons.[[4]](#footnote-5)

* ***The right to adequate housing***

Adequate housing was recognized as a right to an adequate standard of living in the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Economic, Social and Cultural Rights.

The right to adequate housing includes the ability to enjoy certain rights. These rights include:

* Guaranteed residence;
* Restitution of housing, land and property;
* Equal and non-discriminatory access to adequate housing;
* Participation in decision-making on housing-related issues at the national and community levels.

The right to adequate housing presupposes availability of freedoms. These freedoms include:

* Protection against **forced evictions** and arbitrary destruction and demolition of a person's home;
* The right to be free from arbitrary intrusion into the house, private and family life of a person;
* The right to choose the place of residence, to determine where a person should live, and freedom of movement.

International human rights law and related standards prohibit unjustified **forced evictions** for any reason.

The Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan and the Republic of Uzbekistan are member states of the United Nations, therefore, in accordance with the UN Charter and the Universal Declaration of Human Rights, each state is obliged to promote universal respect and observance of human rights and freedoms, including the right to adequate housing and the right to protection against forced evictions.

States' obligations have acquired additional content and legal force of human rights under international law since the time when the state ratified the fundamental International Covenants on Human Rights.

# INTRODUCTION

The International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to housing. There are approximately 100 million people in the world who have no roof over their heads. Another 1.6 billion people around the world live in unacceptable conditions. About 15 million citizens are forcibly evicted every year.[[5]](#footnote-6)

In the countries of Central Asia, the problem of eviction and dispossession of housing is one of the most urgent. In recent years, the authorities of the Central Asian countries have taken some positive steps towards ensuring the right to adequate housing in order to reduce internal displacement and access to adequate housing and have committed to continue working in this area.

*For example,*

**In Kazakhstan,** in 2006, a regulatory resolution of the Supreme Court of the Republic of Kazakhstan “On some issues of the application by courts of legislation on the compulsory alienation of land plots for state needs” was issued. Thus, the Supreme Court explains that courts need to be guided by the Constitution of the Republic of Kazakhstan, alienate property only in exceptional cases and prevent forced evictions until compensation is provided.

**In Kyrgyzstan**, a working group on the right to adequate housing, created under the institution of the Ombudsman of the Kyrgyz Republic, developed a draft Regulation “On the procedure for expropriation of housing for public needs” and promotes it at the level of the Government of the Kyrgyz Republic. The current Housing and Land Codes of the KR don’t regulate the procedure for the expropriation of housing and the norms for public participation.

**In Tajikistan**, in addition to the legally enshrined right to adequate housing, in 2019 the President of the country, Emomali Rahmon, issued a decree on the creation of a working group to develop a draft of a new Housing Code under the Executive Office of the President of the Republic of Tajikistan. The norms for the expropriation of housing were included in the draft of this decree as a separate chapter. At this time, the working group is at the stage of completing the development of the draft Housing Code of the Republic of Tajikistan.

**In Uzbekistan**, along with the constitutional enshrining of the right to housing and the availability of the Housing Code the President of the country initiated a decree “On additional measures for social support of citizens and holding a one-time nationwide action to recognize the ownership of unauthorized built residential premises” dated 20.04.2018, an order “On additional measures to ensure unconditional guarantees of property rights of citizens and business entities” dated 03.08.2019, resolution of the Cabinet of Ministers of the Republic of Uzbekistan “On additional measures to improve the procedure for providing compensation for the expropriation and provision of land plots and ensuring guarantees of rights property of individuals and legal entities” dated November 16, 2019.

The countries of Central Asia, being fully pledged members of International Organizations and remaining committed to the fundamental principles of international law, have ratified about a hundred conventions and treaties in the field of human rights. The countries have taken measures to implement them into national legislation, which enshrines the basic requirements for ensuring the rights of citizens, including the right to housing. Thus, the Constitutions of the Central Asian countries prohibit illegal deprivation of a person's house, as well as illegal intrusion into a house. The legislation establishes that in the implementation of urban planning activities, every citizen has the right to a favorable living environment, and the expropriation of housing property can be carried out only through a court and on exceptional grounds, subject to equivalent compensation for the loss.

At the same time, there are a number of serious problems with the implementation of these positive initiatives on the part of Governments and institutions of states at various levels. For example, in almost all Central Asian countries, national legislation does not fully implement the right of citizens to housing, including expropriation of housing for development purposes. Thus, a summary of the country situations shows the following:

 **Kazakhstan**

The legislation of Kazakhstan does not have the legal formalization of the prohibition of forced evictions and protection against forced evictions required by international standards. The country's legislation lacks such concepts as: “forced eviction”, “the right not to be subjected to forced eviction”, “the right to protection from forced eviction”, “prohibition of forced evictions” and others. Contrary to international law, the legislation of the Republic of Kazakhstan contains norms of forced eviction without the provision of alternative housing. There are no measures to prosecute persons who committed violations in the course of evictions. The presence of a large number of state bodies (akimat (administration), committee for land resources, department of architecture and urban planning and others) leads to the absence of general reliable statistics on forced evictions in the country.

 **Kyrgyzstan**

In the period from 2010 to the present, in the south of the Kyrgyz Republic, there have been several expropriations of housing by local authorities for public needs. As a result of the practice of expropriation in Kyrgyzstan, the rights and / or interests of more than five hundred citizens were violated, the overwhelming majority of which were ethnic minorities. And in all cases, except one, the monetary compensation in exchange for the seized housing was half the market value. After the dispossession of housing, some families, according to the report of the NGO “Interbilim”, have fallen below the poverty line and now they are active displaced persons. In Kyrgyzstan, there are no norms regulating the procedure for eviction and expropriation of housing; the absence of such regulatory and procedural norms in practice leads to gross violations of human rights. However, it should be noted that in practice there are cases when local NGOs, together with representatives of the community, manage to increase the monetary compensation of citizens in exchange for seized housing.

 **Tajikistan**

The legislation of Tajikistan does not disclose the concept of eviction of citizens “for state and public needs”, leading to internal displacement. Also, there are no guarantees to protect the rights of citizens in cases of eviction; no rules have been developed on the priority of the interests of homeowners over others. In practice, this leads to cases of massive internal displacements with violations of the rights of citizens-homeowners. One of the guarantees of protecting the rights of citizens in cases of forced eviction is access to information on urban development plans and related demolitions / evictions. The legislator guarantees the provision of an equivalent living space to replace the demolished one. Unfortunately, the problem of forced evictions in Tajikistan has become urgent over the past five years and requires serious attention from decision-makers.

 **Uzbekistan**

Despite the significant legal support for the issues of demolition and compensation for demolished housing, there are a number of problems in the country related to the implementation of legislative acts. This often leads to conflicts with citizens and lengthy litigation between the owners of the demolished housing, their relatives, people permanently living with them and government agencies that make decisions on the expropriation of land and the demolition of buildings located there. There are cases when residents cannot receive monetary compensation in exchange for the seized housing for years and fall into the category of homeless, forced to rent temporary housing until the completion of new housing. There are thousands citizens in the country whose rights have been violated.

Taking into account the existing problems associated with forced expropriation and low monetary compensation in exchange for seized property, members of the CA network “Right to Adequate Housing” in 2019 formulated hypotheses and conducted research in Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan.

**Research objectives in CA countries aimed at collecting information within the following hypotheses put forward by members of the CA Network, experts on the right to adequate housing:**

1. From year to year, the number of cases of forced expropriation of housing in comparison with alienation of housing property on the basis of mutual consent is constantly increasing. Compensations reimbursed against the seized property by the authorities are not commensurate with its market value and are not relevant to the expropriation situation.
2. Groups of persons in Central Asia affected by the process of eviction and displacement for development reasons are subject to forced expropriation and cannot independently restore their rights to adequate housing.
3. Problems of residents subject to forced expropriation are not included in the reports of the Governments and the Ombudsman and, therefore, these problems are not visible to decision-makers. Decision-makers believe that demolition and urban redevelopment are public needs and a last resort for organizing urban spaces. Compensations paid to residents, in the opinion of the authorities, are proportionate and adequate, and correspond to the market value.
4. There are not enough arguments and evidence base to convince the Governments of the countries with the aim of improving the policy of expropriation of housing for state and public needs and preventing forced evictions.
5. In general, the practice and policy of expropriation of housing for state needs in CA countries does not comply with international standards. The UN Committee's recommendations for the countries under study on the right to adequate housing are not being properly implemented.

The results of all four country studies are analyzed and combined into a unified report.

**OBJECTIVES OF THE REPORT**

1. Combine the results of studies in 4 countries of Central Asia on the implementation of human rights in conditions of eviction and dispossession of housing for state and public needs into a unified regional report.
2. Based on the studies of the Central Asian countries, conduct a comparative analysis and give an overview of the legislative framework and law enforcement practice of eviction and expropriation of housing in the context of the 4 countries, according to international recommendations in stages: before, during and after eviction.
3. Outline the main recommendations for improving human rights to adequate housing in the issues of eviction and dispossession of housing and forced resettlement, as well as in the prevention of forced dispossession in general for the CA region.

# CHAPTER I. Legislation of the CA Countries on Strengthening of Housing Law

The legal framework in the field of forced evictions and expropriation of housing, as well as the rights to adequate housing in each of the CA countries is based on:

* The country's constitution
* Country laws
* Subordinate normative legal acts (sub-laws and regulations)

Chapter 1 provides an overview and comparative analysis of the Constitutions of the four Central Asian countries. The list of laws and regulations governing evictions and forced expropriation of housing is included in the annexes to the report.

## 1.1 Overview of the Constitutions of the Central Asian Countries

The Fundamental Law - The Constitution of each of the four countries should guarantee the inviolability of housing, and it should also lay down mechanisms to prevent forced dispossession of housing. The main provisions of the Constitutions of the Central Asian countries, declaring and regulating the inviolability of property, including housing, are presented in this section.

 **Kazakhstan**

Constitution of the Republic of Kazakhstan[[6]](#footnote-7)

**Article 25.**

1. The home is inviolable. Deprivation of home is not allowed, except by a court decision. Penetration into a house, its inspection and search are allowed only in cases and in the manner prescribed by law.

2. In the Republic of Kazakhstan conditions are created for providing citizens with housing. For the categories of citizens in need of housing specified in the law, it is provided for an affordable fee from state housing funds in accordance with the norms established by law.

**Article 26.**

1. Citizens of the Republic of Kazakhstan may have any legally acquired property in private ownership.

*See also: Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan (SC RK) dated July 16, 2007 No. 5 “On some issues of resolving disputes related to the protection of property rights to housing” [[7]](#footnote-8)*

2. Property, including the right to inherit, is guaranteed by law.

3. No one can be deprived of his property, except by a court decision. Compulsory alienation of property for state needs in exceptional cases provided for by law may be carried out under condition of its equivalent compensation.

*Explanations on this item are presented:*

*- in the normative resolution of the Constitutional Council of the Republic of Kazakhstan dated May 28, 2007 No. 5; [[8]](#footnote-9)*

*- resolution of the Constitutional Council of the Republic of Kazakhstan dated July 1, 2005 No. 4; [[9]](#footnote-10)*

*- resolution of the Constitutional Council of the Republic of Kazakhstan dated June 16, 2000 No. 6/2; [[10]](#footnote-11)*

*- resolution of the Constitutional Council of the Republic of Kazakhstan dated 20.12.2000, No. 21/2.[[11]](#footnote-12)*

4. Everyone has the right to freedom of entrepreneurial activity, free use of his property for any legal entrepreneurial activity. Monopolistic activities are regulated and limited by law. Unfair competition is prohibited.

 **Kyrgyzstan**

Constitution of the Kyrgyz Republic[[12]](#footnote-13)

**Article 12.**

1. The Kyrgyz Republic recognizes a variety of forms of ownership and guarantees equal legal protection of private, state, municipal and other forms of ownership.

2. Property is inviolable. No one can be arbitrarily deprived of his property.

The expropriation of property against the will of the owner is allowed only by a court decision.

Forced confiscation of property without a court decision is allowed in cases provided for by law in order to protect national security, public order, health and morality of the population, and the protection of the rights and freedoms of others. The legality of such an exemption is subject to mandatory review by the court.

The expropriation of property for public needs, as defined in the law, can be carried out by a court decision with fair and preliminary provision of compensation for the value of this property and other losses caused as a result of alienation.

3. Transformation into state ownership of property owned by citizens and legal entities (nationalization) shall be carried out on the basis of the law subject to compensation for the value of this property and other losses.

4. The Kyrgyz Republic protects the property of its citizens and legal entities, as well as its property located on the territory of other states.

5. Land, its subsoil, airspace, waters, forests, flora and fauna, and other natural resources are the exclusive property of the Kyrgyz Republic, are used to preserve a single ecological system as the basis for the life and activities of the people of Kyrgyzstan and are under special protection of the state.

Land can also be in private, municipal and other forms of ownership, with the exception of pastures, which cannot be privately owned.

6. The limits and procedure for the owners to exercise their rights and guarantees for their protection are determined by law.

**Article 30.**

1. Everyone has the right to inviolability of his/her home and other objects that he/she owns or has any other right. No one can enter a house and other objects against the will of the person who uses them.

2. Search, expropriation, inspection and other actions, as well as penetration of government officials into houses and other objects owned or otherwise used are allowed only on the basis of a judicial act.

3. In the cases stipulated by law, search, expropriation, inspection and other actions, penetration of representatives of the authorities into houses and other objects owned or otherwise used are allowed without a judicial act. The legality and validity of such actions are subject to judicial review.

4. The guarantees and restrictions established by this article also apply to legal entities.

**Article 46.**

1. Everyone has the right to housing.

2. No one may be arbitrarily deprived of his home.

3. Bodies of state power and local self-government shall encourage housing construction, create conditions for the realization of the right to housing.

4. Housing for the poor and other persons in need shall be provided free of charge or for an affordable payment from state, municipal and other housing funds or in social institutions on the grounds and in the manner prescribed by law.

 **Tajikistan**

Constitution of the Republic of Tajikistan[[13]](#footnote-14)

**Article 13**

Land, its subsoil, water, air space, flora and fauna and other natural resources are the exclusive property of the state and the state guarantees their effective use in the interests of the people.

**Article 22**

The home of the person is inviolable. Intrusion into a house of a person and deprivation of house is not allowed, except in cases provided by law.

**Article 32**

Everyone has the right to property and the right to inherit. No one has the right to deprive and restrict a person's right to property. The expropriation of personal property for public needs by the state is allowed only on the basis of the law and with the consent of the owner, with full compensation for its value.

Material and moral damage caused to an individual as a result of illegal actions of state bodies, public associations, political parties, other legal entities or individuals, shall be compensated in accordance with the law at their expense.

 **Uzbekistan**

Constitution of the Republic of Uzbekistan[[14]](#footnote-15)

**Article 27**

Everyone has the right to protection from encroachments on his honor and dignity, interference with his private life, and the inviolability of his house.

 *LexUz Comment*

*See article 17 of the Criminal Procedure Code,[[15]](#footnote-16)* *article 100 of the Civil Code[[16]](#footnote-17) of the Republic of Uzbekistan.*

No one has the right to enter a residential premises, to search or inspect, violate the privacy of correspondence and telephone conversations, except in the case and in the manner prescribed by law.

 *LexUz Comment*

*See chapters 16, 17, 20 and 21 of the Criminal Procedure Code of the Republic of Uzbekistan.*

**Article 53**

The basis of the economy of Uzbekistan, aimed at the development of market relations, is property in various forms. The state guarantees freedom of economic activity, entrepreneurship and labor, taking into account the priority of consumer rights, equality and legal protection of all forms of ownership.

 *LexUz Comment*

*See article 167 of the Civil Code of the Republic of Uzbekistan, article 5 of the Law of the Republic of Uzbekistan “On Property in the Republic of Uzbekistan”.[[17]](#footnote-18)*

Private property, along with other forms of property, is inviolable and protected by the state. The owner may be deprived of it only in cases and in the manner prescribed by law.

 *LexUz Comment*

*See Articles 166, 199, 202 - 204 of the Civil Code of the Republic of Uzbekistan.*

**Article 55**

Land, its subsoil, waters, flora and fauna and other natural resources are national wealth, are subject to rational use and are protected by the state.

## 1.2 Comparative analysis of the Constitutions of Central Asian countries

In general, the Constitutions of all four Central Asian countries declare the inviolability of private property, including housing, but at the same time allow expropriation for public needs. At the same time, the Constitutions of all 4 states provide for obligatory equal compensation in the event of a forced expropriation. In theory, this provision should guarantee the protection of citizens' rights, however, as practice has shown, “equal compensation” is understood by different parties in their own way, including at the legislative level.

With regard to the issue of dispossession of housing, the Constitutions make reference to laws. Although the expropriation is considered to be an exceptional measure, the general wording and the absence of specific restrictions in the Constitutions provide an opportunity for legislators and other rule-makers to interpret and establish practically different rules regarding expropriation in separate laws and regulations.

However, the Fundamental Law of the Republic of Tajikistan should be separately noted: Article 32 of the Constitution of the Republic of Tajikistan provides for the obligatory consent of the owner before expropriation of property. This norm is a serious barrier for arbitrary expropriation and use of some laws for this purpose, since the norms of the Constitution have supreme legal force.

In this connection, the presence of the requirement for the consent of the owner right in the Constitution of the Republic of Tajikistan should be a good mechanism for protecting the right to adequate housing. But, in fact, this rule does not work, which is a problem of law enforcement practice.

# CHAPTER II. Compliance of the National Legislation and Law Enforcement Practices of the CA Countries with the International Norms of Expropriation (buy-out) of Housing BEFORE EVICTION

## Summary of Chapter II

The UN Pre-Eviction Basic Principles and Guidelines call on participating countries to widely involve residents whose households are subject to demolition and dispossession in the planning phase. Urban or rural planning and development processes should involve all those likely to be affected and should include the following elements:

(a) appropriate notice to all potentially affected persons that eviction is being considered and that there will be public hearings on the proposed plans and alternatives;

(b) effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups;

(c) a reasonable time period for public review of, comment on, and/or objection to the proposed plan;

(d) opportunities and efforts to facilitate the provision of legal, technical and other advice to affected persons about their rights and options; and

(e) holding of public hearing(s) that provide(s) affected persons and their advocates with opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities.[[18]](#footnote-19)

The CA Network “Right to Adequate Housing” having examined these principles in the context of the four countries states that no country is sufficiently implementing these principles. We suggest considering how these principles are implemented in the countries of Central Asia.

## 2.1 Adequate notification of residents about impending eviction and expropriation of housing

Any decisions on eviction must be communicated well in advance in writing and in the local language to all those who may be affected.

So the above principles clarify that the authority that initiated expropriation must in the letters of notifications substantiate the decision in details and reflect the following information:

1. *evidence of the absence of reasonable alternatives;*
2. *all details of the proposed alternative options;*
3. *if there are no alternative options, a description of all measures taken and planned to minimize the negative effects of the eviction.*

There should be an option to review final decisions by administrative or judicial procedure. If necessary, all affected parties should also be guaranteed timely free access to a lawyer.

In the legislation of the studied CA countries, the procedures for notifying potentially affected persons cannot be called “appropriate notice”. The results of the study of the practices of the CA countries show that the information in the notifications is limited and concerns only information that their housing is subject to demolition, on what basis it should be done and where to go to clarify the information. Moreover, in the justification of the expropriation, reference is made to the decision of the authorized authority, where there are no intelligible explanations and evidence that demolition and expropriation is an exclusive and the only measure.

 For example, in Kyrgyzstan, ***in the absence of a regulation “On the Procedure for the Expropriation of Housing,” there are no norms for providing notifications and information prior to the actual expropriation.*** Due to the absence of the aforementioned norms, the practice of providing notifications to residents vary, some notification letters indicate the amount of compensation, others do not have this information, thirdly, the notification may not indicate the reason for the expropriation, and even more so, there may be no invitation to the discussion of the alternative option and expropriation procedures.

*Quote 1: “We were given notices one month before the demolition, they indicated the number and date of the Order of the Osh City Mayor’s office and where we should go for more information.” (residents of Osh city, Monuev street)*

*Quote 2: “We were verbally warned a year in advance and held a meeting, but we thought that until they find money for compensation and reconstruction of the road, it would take years, since it was lake that before. Then, a year later, a written notice was provided 5 months before the expropriation, indicating the amount of compensation, but without justification. For the third time, the notification was provided 7 days before the expropriation. On May 26, 2016, a notification was given indicating the amount of compensation and the decision of the local council of deputies. On May 27, we gave a written refusal about our disagreement, however, despite this, our fences began to be demolished on June 3, without our consent and the conclusion of preliminary agreements on expropriation." (residents of Lenin street, Jalal-Abad city).*

The legislation of the Kyrgyz Republic does not indicate a specific authorized body that has the right to make a decision on expropriation.

So, the decision to demolish in the above cases is made by different authorized bodies: in one case - by the mayor's office, in the other - by the deputies of the local council.

 Each authorized body can set the deadlines for providing notifications at its own discretion; this is not regulated by any by-law. In the described Jalal-Abad case the first notification was provided in January 2016. Then the authorized body, realizing that sufficient grounds have not been given, fixes it with a decision of the local council of deputies after notifying citizens. So the Decree of the local council of deputies is passed on the expansion of the road and partial expropriation of land for individual housing, it is issued in February, a month after notifications were given.[[19]](#footnote-20)

The situation with an unregulated procedure for issuing notifications in the legal acts of the Kyrgyz Republic creates grounds for gross violations of the rights of residents and leads to impunity of decision-makers.

 In contrast to Kyrgyzstan, in the legislation of the *Republic of Tajikistan*, the norm on notifications is spelled out, both regarding the timing of its provision, and in part and responsibility of the state body for notifying the affected persons.

The Land Code of the RT states *“A land user or user of other registered rights related to land must be* ***notified in writing by the local executive body of state power*** *no later* ***than one year*** *before the upcoming expropriation of the land plot”.[[20]](#footnote-21)*

 At the same time, ***in practice***, residents note the improper implementation of the legislation:

Quote: *“State authorities notified about the expropriation of land for public and state needs in 24 cases out of 50. Mainly from the local executive body of state power and the land management agency. Notifications were made in the following form: in writing - 1 case, oral - 6 cases, and employees of the local executive body of state power came - 13 cases. In most cases, a copy of the land acquisition decision was not provided. The reasons why the house should be demolished and / or the land should be seized were mostly explained.”* (residents of GBAO).[[21]](#footnote-22)

*“Out of 50 respondents in Dushanbe, 33 noted that they were not approached by the state authorities with notification of the expropriation of land for public and state needs. In the remaining 17 cases, the notification was made orally.*” [[22]](#footnote-23)

Thus, in Tajikistan, even if the legislation establishes the procedure and terms for notification, in practice, many are not provided with notifications and the deadlines for providing notifications established by legislation are not adhered to.

 In the *legislation of Uzbekistan*, similar to Tajikistan, the rules of notification are enshrined:

*"State bodies are obliged to notify the owner of the house, other buildings, structures or plantings about the decision in writing (to be counter-signed) no later than six months before the start of the demolition with a copy of the decision of the Council of Ministers of the Republic of Karakalpakstan, the khokim (*Governor*) of the region and the city of Tashkent attached to the notification." [[23]](#footnote-24)*

Researchers in Uzbekistan note that in practice, there are facts when the demolition was carried out without notification. In addition, notifications, notices, announcements, messages, information - there are so many names of notifications, which are issued by developers, their representatives, land resources and state cadastre authorities, law firms, mahalla committees, garage departments, respectively, and information in notifications is also different.

 In practice, notifications are issues by different authorities, although the law obliges to notify about the demolition exclusively - the khokimiyat (Office of the Governor) of the rayon (district). This was confirmed by the Ministry of Justice of Uzbekistan with its letter to the appeal of human rights defenders (letter No. 11 / 23-739 / 17 dated September 18, 2018): the notification must be prepared by the district hokimiyat and, in accordance with the Resolution of the Cabinet of Ministers dated March 29, 1999, No. 140, placed on the appropriate letterhead of the organization. Notably, *"the document shall be signed by the leading employees of the organization or other officials in accordance with their competence established by the current legislation or other legal acts."*  It should be noted that a ***notification prepared by a non-khokimiyat of the rayon has no legal force and the date of receipt of such a "notification" is not the start of the 6-month period before the start of demolition.***

In the legislation of Uzbekistan, unlike other countries, a specific person is indicated who must notify - khokims (Governors), and the deadline for providing notifications before demolition is 6 months. However, the laws of Uzbekistan do not provide an exhaustive list of issues that should be contained in the text of the notice: there is no mentioning of eviction procedures, payment of compensation, or public discussions.

 According to the experts' conclusions, the best procedure for providing notifications of the demolition of housing for potentially affected parties, close to international principles, is enshrined in the *legislation of the Republic of Kazakhstan*:

*“The executive body or on behalf of a higher body, a subordinate executive body is obliged, no later than three calendar days after the publication of the resolution specified in paragraph 2 of Article 63 of this Law[[24]](#footnote-25), to send a written notification to the owner or non-state land user on the compulsory alienation of a land plot or other real estate in connection with the expropriation a land plot for state needs (hereinafter referred to as a notice of expropriation of a land plot for state needs) by mail with the obligatory receipt of a notice of delivery of the postal item. In the absence of notification of delivery, the documents specified in this clause shall be re-sent.”*

**The progressiveness of this law** lies in the description of the procedure for providing a letter of notification:

* the **authority providing the Notice** is specifically identified;
* **terms of delivery**;
* **receiving notification of delivery** of the document.

Further, the norm was also strengthened in terms of what information should be contained in the text of the Notice:

*The notice on expropriation of a land plot for state needs shall indicate: 1) information on the adopted resolution specified in paragraph 2 of Article 63 of this Law (with a copy of the resolution attached); 2) information about the owner or non-state land user; 3) location, area, cadastral number of the expropriated land plot or other immovable property; 4) information on the procedure for determining the amount of compensation at market value; 5) information on the possibility of choosing one of the methods of equivalent compensation; 6) information on the procedure for signing an agreement on the expropriation of a land plot for state needs, as well as an explanation on the judicial procedure for resolving the issue of the expropriation in case of refusal to conclude an agreement; 7) the time frame for the provision of copies of title and identification documents for the expropriated land plot or other immovable property for the organization of their assessment.*

From the point of view of experts, these norms also do not fully reflect the guidelines for forced evictions, since any decisions on eviction should be provided in advance in writing and communicated in the local language to all those who may be affected and with all details of the lack of alternatives to avoid demolition and expropriation of housing, as well as the conditions for public discussions. That is this norm, as well as the norms of the legislation of other countries, deprives the affected persons of the right to take part in the decision-making process on demolition, and confronts them with the fact of expropriation, limiting the possibility to challenge the decision of the authorized body to higher and judicial authorities. Thus, if the legislation of the two countries of Uzbekistan and Tajikistan requires the mandatory provision of notifications with specific deadlines, the legislation of Kazakhstan, in addition to all that, gives a list of issues that must be included in the text of the Notification. Unlike the three mentioned Central Asian countries, the legislation of Kyrgyzstan does not mention the provision of notifications, which in itself is nonsense! (Comparison Table 1)

Despite some difference in the content of legal acts and some countries being more advanced in lawmaking and others lag behind, in all four studied CA countries there is a ***weak law enforcement practice***. Persons affected by the expropriation process express dissatisfaction and confirm that notifications, other than “horror stories”, do not carry anything intelligible in them. Also there are no mechanisms for monitoring the implementation of laws., there is not a single case of bringing an authorized person to responsibility for improper notification In the practice of the countries.

Some notices on demolition may contain warnings that affected individuals have the right to go to court. Courts in Central Asia, according to the statements of the members of the Central Asian network “RAH”, take the sides of the authorities and, when making decisions, do not take into account the fundamental rights protected by domestic and international legislation. In many cases, homes are demolished without a court order or without giving residents sufficient time to appeal an eviction decision. These ***facts*** were recorded in Kyrgyzstan, Tajikistan, and especially in Uzbekistan and are **an indicator of the forced dispossession of housing**.

Based on UN-Habitat Fact Sheet # 25, inappropriate notification of residents is an indirect manifestation of “**forced expropriation**”. **In particular,** forced expropriation cases where notification letters do not justify the decision to such expropriation, do not indicate why there are no other alternatives, do not provide information on the chronology of events, resettlement and compensation, and do not describe a complaint procedure. Residents should also be informed about the assistance that will be provided to them in moving their property and building materials to the resettlement area. Thus, receiving a notice of eviction **in the prescribed manner** helps and allows persons subject to eviction **to assess the value of their property**, investments and other material benefits that may be affected in this process. Persons subject to eviction should also be given the opportunity to as**sess and document the intangible loss** in order to obtain appropriate compensation.[[25]](#footnote-26)

In this regard, **experts from the Right to Adequate Housing Network urge the CA countries to**:

Improve country legislation and law enforcement practices for proper notification, in line with the guidelines for forced evictions by:

* amendments to the legislation of the four CA countries
* adoption of special measures to monitor the implementation of the norms of the laws of countries on prior notification.

## 2.2 Participation of residents in the discussion of the grounds for the expropriation of housing

For residents of any state, government plans to evict and expropriate housing should not be “news of the day”. All members of urban and rural communities should be aware of the anticipated urban planning and investment plans, about the upcoming renovations and demolitions of the housing at the stage of discussion of the Master plans of the settlement. Unfortunately, the members of the CA “RAH” network state the fact that in all four CA countries ***the Master Plans are limited in access***. It is not always clear to the groups of people affected by the demolition process whether the grounds for demolition are legitimate, whether this is the only and exclusive measure for development.

The UN Basic Guidelines recommend the following to all countries: *“States should explore all possible alternatives to eviction. All individuals and groups of people potentially at risk of eviction, including women, indigenous peoples and persons with disabilities, and those who speak on their behalf, have the right to receive the necessary information, to full consultation and to participation at all stages of the process, as well as the right to propose alternatives that the authorities must give due consideration to. In the event that the parties concerned cannot agree on the proposed alternatives, the decision should be made by an independent body with constitutional authority, such as a court, tribunal or ombudsman following a mediation, arbitration or judicial process.” [[26]](#footnote-27)*

We suggest to review the **Legislation** of the studied CA countries from the point of view of the questions: **What is the rationale for the demolition and expropriation of land and housing? How is this implemented in practice, and are citizens sufficiently informed about the reason for the expropriation and about the measures for their protection?**

 **Kazakhstan**

For Kazakhstan, the basis for the expropriation of housing is the following norm of the law:

“A land plot can be forcibly alienated **for state needs** in exceptional cases, subject to an equivalent compensation for property with the consent of the owner or non-state land user or by a court decision. This point is enshrined in the Land Code of the Republic of Kazakhstan.” [[27]](#footnote-28)

**Exceptional needs are understood as the absence of any other way to meet public needs.**

Exceptional needs/cases include:

* *international obligations;*
* *discovery and development of mineral deposits;*
* *provision of land for the needs of defense and national security, specially protected natural areas, health-improving, recreational, historical and cultural purposes, the creation and functioning of special economic zones;*
* *construction (reconstruction) of roads and railways, airports, airfields, air navigation facilities and aviation technical centers, railway transport facilities, bridges, subways, tunnels, energy system facilities and power transmission lines, communication lines, facilities supporting space activities, main pipelines, engineering and communication networks, oil refining facilities classified as strategic facilities;*
* *implementation of concession projects, public facilities of settlements;*
* *satisfying the needs of the population in pasture lands for grazing farm animals from individual farms;*
* *meeting the needs of the population in land plots for individual housing construction in accordance with the general plan or the scheme of development and construction of settlements;*
* *execution of master plans of settlements in terms of the construction of facilities falling under the list of exceptional cases established by this article, as well as the construction of facilities provided for by the documents of the State Planning System of the Republic of Kazakhstan, at the expense of budget funds.*

Some items from the above list of justifications do not apply to exceptional cases provided for by international acts. For example, meeting the needs of the population in pasture lands or the creation and functioning of special economic zones is not an exceptional norm, any entrepreneurial project can fall under this norm. Thus, the risk of unjustified dispossession of housing increases dramatically.

 ***Practices***

*Meanwhile, the materials of the case contain a petition of the defendant to involve in the case a specialist from the Department of Architecture and Urban Planning of Astana City to clarify issues related to the forced expropriation of a land plot. It specifically states that part of the land plot expropriated from the defendant falls under individual housing construction, and according to the deputy director of the Municipal enterprise “G”, the road to the cottage town may be built without affecting the boundaries of the defendant's land plot. First, commercial evictions often take place on the pretext of government needs; secondly, public evictions are only a part of larger housing proceedings and are not common in law practice; thirdly, this practice takes place mainly in densely populated cities such as Astana and Almaty (with the exception of objects of state importance, such as a copper ore deposit in the case of the Zhezkazgan region). In this regard, there are such problems as the lack of a unified regulation for the assessment of housing and compliance with the legislation on enforcement proceedings during evictions.[[28]](#footnote-29)*

Lawyers and experts noted frequent cases of evictions not for state needs. Often, under the pretext of state needs, residents of areas that were planned for commercial use were evicted. Below is a quote from an interview with one of the lawyers. *“I remember there was one [case] ... They wanted to build a Residential Complex - and the residents were evicted because of this. There was a house on the left [bank of Astana]. They turned to me - we won the case at that time. They wanted to demolish this house - the apartments - and build a new residential complex. And this is not a state need.”*

In fact, the majority of the changes to the master architectural plans are made in large cities such as Nur-Sultan and Almaty. However, as it was revealed later in the research process, cases of evictions for state needs in other regions (in the case of this study, the Zhezkazgan region) do occur. Nevertheless, the Zhezkazgan region was of national importance - a deposit for the processing and extraction of copper.Thus, ***the main criterion for eviction in less densely populated regions is the economic significance of the region for the state.***

The majority of residents of Kazakhstan do not receive information about the reasons for the expropriation in the notifications, not speaking about the measures of protection or litigation. In the event of violation of rights, they are forced to independently resort to the services of a lawyer or to turn to public human rights organizations.

 **Kyrgyzstan**

There is no single concept in the legislation of Kyrgyzstan as to the purpose for which the expropriation is made. Experts of the Kyrgyz Republic on housing issues note the existing vacuum in legislation: “For example, some provisions of the Land Code use a combination of the concepts of “state” and “municipal” needs (Article 20), while others use a combination of the concepts of “state” and “public” needs (Articles 29, 66, 68, 111), and in other cases - a combination of all three concepts at the same time (Articles 32, 46). The reasons for this approach of the legislator are not entirely clear. There is no distinction between these concepts in the legislation. The Civil Code uses the concept of “public needs” for the expropriation of a land plot, which corresponds to the concept specified in the Constitution of the Kyrgyz Republic (Articles 233-17, 233-18). According to Article 12 of the Constitution of the Kyrgyz Republic, expropriation is possible for “public needs”. It should be noted that the land legislation in this part should be brought in line with the Constitution, and references to “state” and “municipal” needs should be excluded. Public needs should be provided as the only basis for the acquisition of land.” [[29]](#footnote-30)

In view of the above, ***it is important to establish a clear and comprehensive list of types of public needs, as the exclusive grounds for the expropriation of land plots for these purposes.*** This will eliminate arbitrariness on the part of the authorities and will give stability and predictability to legal relations regarding the rights to land and housing property.

So, the Land Code of the Kyrgyz Republic uses the concept of **“state”, “municipal” and “public needs”, which are understood as** needs related *to ensuring national security, environmental protection and objects of historical and cultural heritage, placement and maintenance of social, industrial, transport, energy, engineering and architectural and construction documentation, development of mineral deposits, implementation of international treaties of the Kyrgyz Republic*.

The Housing Code of Kyrgyzstan uses only the concept of “public needs”, which are: *1) fulfillment of international obligations of the Kyrgyz Republic; 2) placement of the following objects of state or municipal importance in the absence of other options for the possible placement of these objects: a) defense and security facilities; b) objects of transport, roads, IT and communications; c) facilities that ensure the status and protection of the State Border of the Kyrgyz Republic; d) facilities that support the activities of natural monopoly entities; e) objects of engineering, road transport infrastructure (buildings, structures and linear routes), as well as IT and communications, power and gas supply; f) social infrastructure facilities built at the expense of the republican or local budget; g) objects of heat and water supply of municipal importance.*

The list of justifications given in the Housing Code of the Kyrgyz Republic complies with the norms of the Constitution of the Kyrgyz Republic and gives an understanding of what needs to be understood by public needs. In this connection, **the authorized body, when expropriating a land plot, should rely on the norms of the Housing Code of the Kyrgyz Republic as a justification**.

However, the Constitution of the Kyrgyz Republic allows for **forced expropriation without a court decision** in order to protect national security, public order, health and morality of the population, and the protection of the rights and freedoms of other persons. In this case, the legality of the forced expropriation is subject to mandatory review by the court and payment of appropriate compensation.”[[30]](#footnote-31) That is, in this case, expropriation can occur without concluding an agreement and voluntary transfer.

In practice, in 28 cases the expropriation of residential property in Jalal-Abad was carried out against the will of the owners. The justification for the expropriation was the expansion of the central street of the city, which does not belong to the list specified in the Constitution of the Kyrgyz Republic. The expropriation of housing and buy-out on the grounds of road reconstruction is a public need, and the state should expropriate it solely by reaching agreement and paying proportionate compensation, without contradicting the requirements of the Housing Code of the Kyrgyz Republic, and in the absence of violations of the principle of voluntary alienation.

The actions of the local authorities, contrary to the Constitution, were challenged by human rights activists in court. However, as a result of intimidation of persons of ethnic minorities (groups of persons affected by the expropriation) these persons were forced to sign a contract that was unfavorable for them.

*Note: In other Central Asian countries besides Tajikistan, the Constitution allows for forced expropriation, subject to equal compensation. It should be noted that according to the Constitution of the Republic of Tajikistan, expropriation is allowed only with the consent of the owner, but this rule does not guarantee the absence of the practice of forced expropriation.*

 ***Practices***

**Expropriation of households in Bishkek**. Violation of citizens' rights occurred due to corruption in the field of development activities. To build its facility, the construction company Babek Ltd, owned by the family of a high-ranking official, had to buy out private land in the city center. But three families refused to sell their homes. Then the mayor's office filed a lawsuit for the forced expropriation of housing for state and public needs. But public needs turned out to be the interests of the private construction company Babek Ltd. According to the Master Plan and the draft of the detailed planning of the Soviet era, a technical library was supposed to appear on the site of these houses, but the mayor's office said that at the moment the city did not need it. Residents in court did not dispute the grounds. The lawsuit was filed in terms of determining the redemption price of land plots, while the court took into account the state expertise and ruled in favor of the mayor's office.” [[31]](#footnote-32)

**Expropriation of housing on the Monuev street in Osh** city took place in order to expand the street, in accordance with the Master Plan of Local Development. A good practice to properly inform the eviction group was to establish a street reconstruction scheme on a bulletin board in their community. Moreover, for the constant informing of residents, a temporary Headquarters was opened, which worked seven days a week. This is not to say that this good practice was adopted in other regions. In Jalal-Abad city, such practice of awareness raising was not adopted, and in the notifications they indicated the reason for the demolition as an extension of Lenin Street, which was not in the Jalal-Abad Master Plan.

Law enforcement practice in Kyrgyzstan shows that residents can learn about the upcoming plans for the reconstruction and development of the city only during public hearings of master plans of the territories, which is held only in 10% of cases out of 100% possible throughout the country. Many residents whose houses are affected by the expropriation do not realize that the authorized body must inform them about the existing legal grounds. According to the study, out of 119 cases of expropriations, only 22 households challenged the decision of the local authorities to demolish their homes in court with a complaint about nonexistent grounds. The residents of Kyrgyzstan receive information about the measures to protect their rights during the expropriation of housing from non-governmental organizations. However, there are those who may not be aware of the existence of such organizations and, as a consequence of poor awareness, their right to adequate housing is not being realized. The state does not conduct a large-scale campaign to inform citizens about the rights when expropriating their houses and, moreover, does not provide proper legal assistance.

 **Tajikistan**

The decision to expropriate a land plot for state or public needs is made in *Tajikistan* after the approval of the relevant projects. Expropriation of land for state or public needs is carried out in exceptional cases in the absence of other options for the location of objects related to:

1. fulfillment of international obligations of the Republic of Tajikistan, ratified in the prescribed manner;
2. the creation of new settlements, the expansion of cities and towns;
3. placing the following objects:
   * defense and security facilities;
   * objects of transport infrastructure: highways, streets, bridges, tunnels, overpasses, and other transport engineering structures, communication facilities;
   * facilities for electricity, gas, heat and water supply, as well as facilities for wastewater disposal;
   * schools, libraries, hospitals, cemeteries, parks, sports and playgrounds and other social needs, as well as government buildings serving government and public purposes;
   * discovery of mineral deposits;
   * protection of monuments and objects of archaeological, historical or scientific value in cases where they are threatened with disappearance or destruction.[[32]](#footnote-33)

 ***Practices:***

**Gorno-Badakhshan Autonomous Oblast** (GBAO): There were no public hearings on the issue of land or housing expropriation for public and state needs with the participation of citizens. The respondents noted that they also lack access to information about urban planning documentation.

**In Khatlon oblast**: The main reasons for the expropriation of housing were the expansion of national roads.

**Cities and Districts of Republican Subordination**: The respondents noted that no public hearings on the issue of land or housing expropriation for public and state needs with the participation of the population were held. There is also no access to information on urban planning documentation.

**In Dushanbe city**: The reasons why the house should be demolished and the land plot expropriated were not explained either. [[33]](#footnote-34)

Thus, a study in Tajikistan **confirms the fact of low awareness of citizens about the reasons for the demolition of housing, about measures of protection and legal assistance from the state.**

 **Uzbekistan**

The expropriation of land plots and the building located on it is allowed for state and public needs for the following purposes:

* + *provision of land for the needs of defense and state security, protected natural areas, the creation and functioning of free economic zones;*
  + *fulfillment of obligations arising from international treaties;*
  + *discovery and development of mineral deposits;*
  + *construction (reconstruction) of highways and railways, airports, airfields, air navigation facilities and aeronautical centers, railway transport facilities, bridges, subways, tunnels, energy systems and power transmission lines, communication lines, space facilities, trunk pipelines, engineering and communication networks;*
  + *execution of master plans of settlements in terms of the construction of facilities at the expense of the State budget of the Republic of Uzbekistan, as well as in other cases directly provided for by laws and decisions of the President of the Republic of Uzbekistan.*
  + *for investment projects[[34]](#footnote-35)*

The grounds for expropriation in Uzbekistan differ from other countries in that two additional reasons are indicated in the grounds for expropriation: (1) “as well as in other cases provided for by the decisions of the President of the Republic of Uzbekistan” and (2) “investment projects”. These two grounds are directly dependent on the interest of the country's top person and developers, and it can be difficult to prove their exclusivity in the process of house expropriation and forced eviction.

Leilani Farha, UN Special Rapporteur on the Right to Adequate Housing, in her report to the Human Rights Council in March 2010, notes: “Today, more than ever, private developers and investors dominate housing construction systems, often depriving housing of its social function and using it as a commodity that becomes an object of speculation. The land on which informal settlements and affordable housing are located have become the main targets of private equity companies and pension funds looking for undervalued assets to locate, augment and raise capital, making housing and land increasingly expensive.”[[35]](#footnote-36)

Central Asian countries are no exception in this matter. These facts are especially often manifested in Tajikistan and Uzbekistan, where there is no private property right to land. If it is decided that the land on which there is a residential building went to a private investor, then the investor would negotiate with the residents about the demolition and payment of compensation.

 ***Practices***

The following chronology can be used to track the practice of providing Notifications in the Republic of Uzbekistan.

***November 16, 2018*** - Residents of one of the areas where demolition was planned, in the vicinity of Khoja-Akhrar, were informed that they have only three days to clear and leave their homes. The authorities did not provide any alternative housing options and asked the affected residents to go to live with relatives or friends, and did not explain the reason for the demolition. Residents do not know in such cases who to ask and don’t understand whether the demolition is actually on the legal grounds.

***November 20, 2018*** - Local authorities arrived with heavy duty equipment. A small group of residents gathered to protect their homes and refused to disperse. They were surrounded by a large number of police officers. Ultimately, the local government decided to leave without demolishing the houses.

***November 22, 2018*** - A group of residents arrived at the Asian Human Rights Forum in Samarkand, but they were not allowed to enter the premises. Some residents were taken to the police station and released after promises that demolition would not take place in the winter. They were subsequently informed that the demolition would take place in May 2019.

The aforementioned cases of forced evictions reflect the general picture of the country, not limited only to the cities of Samarkand and Tashkent. For example, in the city of Yangiyul, Tashkent oblast, residents in two apartment buildings received verbal information that they would have to leave their apartments as soon as possible. These cases were reported to the UN Special Rapporteur on the Right to Adequate Housing and this is confirmed by personal stories on social media.[[36]](#footnote-37)

There are cases when residents are approached by the heads of the local municipalities (khokims) or municipal officials, who only verbally inform them about the upcoming demolition of their houses. The notice period is usually only one or two weeks and there is pressure on residents to leave their homes as soon as possible, although the statutory notice period is 6 months. Sometimes, authorities promise affected residents that temporary alternative housing will be provided, but reportedly there are no written documents that residents can rely on, and there is no prior consultation with residents about those urban redevelopment projects that entail demolitions of houses, or any advice on resettlement or compensation options.

Thus, in all the four Central Asian countries under study, forced expropriations and evictions are carried out without proper informing on the grounds of expropriation and involvement of the population in the process of discussing the stages of demolition and compensation.

References to “public needs”, “common good”, “public good”, “public use”, “public needs”, “national interests”, or “serving the public good” are commonly used to justify expropriations and evictions.

References to “public needs”, “common good”, “public good”, “public good”, “public needs”, “national interests”, or “serving the public good” are commonly used to justify expropriations and evictions.

While the constitutions of all four countries guarantee the inviolability of housing property, laws and regulations, and, in general, the policies and practices of the countries of expropriation of housing do not fully protect housing and do not provide for the right of affected persons to adequate housing to be exercised, as well as legislative innovations are not in force to prevent cases of “forced expropriation of housing”.

The Basic Principles and Guidelines for Development-Based Evictions and Displacement require the following from States:

*“During planning processes, opportunities for dialogue and consultation must be extended effectively to the full spectrum of affected persons, including women and vulnerable and marginalized groups, and, when necessary, through the adoption of special measures or procedures.” [[37]](#footnote-38)*

 According to the study of the members of the CA Network “RAH”, residents in all studied countries are poorly involved in the process of discussing development master plans. However obtaining information in advance would allow residents to complete registration of title and legal documents, find an acceptable place for resettlement, revise obligations to third parties, etc.

In this sense, the experience of Kyrgyzstan (Osh city) is noteworthy, when residents, when discussing the draft rules for construction and land use in 2017, were given information in advance about the objects to be reconstructed: in the cartographic schemes of the city, objects that are subject to reconstruction and under a threat of demolition of individual housing, were highlighted in a separate color in the form of designed objects. [[38]](#footnote-39)

The results of the study answer the question: **Have there been any cases of challenging the grounds for demolition in courts** in the CA countries, as follows: **In all four countries: in Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan, there are cases of challenging in court**. In practice, the CA countries have not a single case of challenging in court the facts of restricting the participation of victims in the process of discussing plans for expropriation and demolition. However, almost all claims are defeated in court proceedings. Unfortunately, the practice is such that the judicial system in all CA countries takes the side of the authorities when making decisions, positive cases are rare.

## Conclusions for Chapter II:

1. Country studies demonstrate that almost all four states of Central Asia do not fully implement the requirements of national legislation on the grounds of expropriation. In practice, no measures are taken and no opportunity is given to provide legal, technical and other assistance to affected persons in order to inform them that the expropriation is carried out for exclusive purposes, as well as to provide information about their rights and the possibility of challenging the decisions of the authorities on expropriation.

2. Public hearings are not held at the proper level, during which the affected persons and their representatives could challenge the decision to evict and / or propose alternative options and formulate their wishes and development priorities. In Kyrgyzstan, there is a practice of holding public hearings, but only in those cases when appropriate requirements are put forward by human rights NGOs.

3. In the process of planning of the evictions, in none of the studied CA countries the affected parties, including women, vulnerable groups were provided with real opportunities for dialogue and consultations. Although special procedures for agreement with residents are spelled out in the laws and regulations of Kazakhstan and Uzbekistan. There are no such procedures in the legislation of Tajikistan and Kyrgyzstan. The positive experience of Kyrgyzstan should be noted: in two cases of expropriations, community representatives were included in the commission to agree on issues of compensation as the representatives of the public.[[39]](#footnote-40) All of these actions were carried out with the active assistance of human rights non-profit organizations, members of the CA network for the RAH.

4. Answering the question: Does the studied practice and the conclusions of the study prove the nature of the forced expropriation? - We can say yes, it does. According to the conclusions of international experts studying world practice, deprivation of ownership of housing, carried out without proper justification or in violation of international law, is considered to be forced eviction.[[40]](#footnote-41)

# CHAPTER III. Compliance of the national legislation and law enforcement practice of the CA countries with the international norms for the expropriation (buy-out) of housing DURING THE EVICTION

## Summary of Chapter III

In accordance with the basic principles and guidelines on issues related to eviction and displacement, as outlined by UN Special Rapporteur Miloon Kothari[[41]](#footnote-42) on adequate housing, where eviction is unavoidable and necessary for the common good, the state must provide or ensure that fair and adequate compensation is provided for all lost personal, immovable and other property or things, including the rights to such property or interest in it.

Compensation should be provided for any economically assessable damage in due course and commensurate with the seriousness of the violation and the circumstances of each case, including death or personal injury; physical or mental harm; missed opportunities, in particular in the areas of employment, education and social benefits; material damage and lost profits, including loss of earning opportunities; moral damage; and the costs of legal or expert assistance, medicines and medical services, and psychological and social services.

Monetary compensation should in no way substitute for real compensation with land or access to resources that are in the public domain. In the event of land confiscation, the evicted person must receive, as compensation, a land plot of similar or better quality, size and value.

## 3.1 The practice of providing compensation in CA countries

 **Kazakhstan**

In the Republic of Kazakhstan, in case of forced termination of the right of ownership of a house for the compulsory alienation of the land plot on which the house is located, for state needs, one of the following types of compensation is provided at choice:

1. monetary compensation paid to the owner before the termination of ownership, at market values of the housing and the land plot, as well as compensation in full for losses caused to the owner;

2. a comfortable housing (apartment or residential building) in the ownership.

According to the Article 29, Clause 2 of the Law of the Republic of Kazakhstan dated April 16, 1997 No. 94 “On Housing Relations”, if the cost of the provided residential premises is higher than the cost of the demolished residential premises, then the difference in their value is not charged to the owner, and if the cost of the demolished residential premises is higher than the cost of the provided residential premises, the difference in their value shall be reimbursed to the owner.

In the case of forced alienation of a land plot, if the granted right is purchased from the state by the land user, then compensation shall be carried out with reimbursement to the land user of the cost of payment for the redemption of the land use right, and also, at his request, another land plot can be provided. If the granted right has not been purchased from the state by the land user, he may be provided with another land plot in exchange. At the same time, compensation for losses to the land user in case of forced alienation of a land plot for state needs shall be carried out in full in the manner prescribed by the laws of the Republic of Kazakhstan.

The legislation of Kazakhstan defines that the determination of the market or other value of movable property is carried out by applying valuation methods grouped into income, cost and comparative approaches. Experts and lawyers of Kazakhstan in their interviews several times noted the fact that ***the country lacks a common housing assessment system***. Moreover, there is also the problem of non-compliance with the prescribed conditions for the implementation of this policy. Everything is given to self-regulatory organizations that have their own standard for property valuation.

Article 119-1 of the Law of the Republic of Kazakhstan No. 94 of April 16, 1997 “On Housing Relations” provides for the capital of Kazakhstan, upon payment of compensation, an additional norm: “…in the event of the compulsory alienation of land plots for state needs at the choice of the owner of a residential premises located on the alienated land plot, compensation is paid in the amount of the market value of the residential premises, or a comfortable residential premises is given into ownership, the useful area of ​​which must not exceed the useful area of ​​the forcibly alienated residential premises, unless other preferential norms are guaranteed to citizens by law.”

***Practices:***

Most of the complaints, based on the personal experiences of focus group participants conducted during the research, were their ***dissatisfaction with the proposed eviction compensation***. Thus, the respondents identified two problems:

* the proposed amount in the form of compensation was not sufficient and equivalent to value of the previous housing;
* the offered apartments in the city of Satpayev were in poor condition.

Regarding the first problem, it is worth highlighting the fact that the proposed amount of compensation and its discrepancy with the desired or actual (market) prices for housing is the most frequent problem, which was also mentioned during interviews with experts. So, according to one of the respondents, the cost of his home was estimated much cheaper than it should have been. Moreover, when assessing the residential premises of the focus group participant, only the square of the residential premises was taken into account without calculating the adjacent land plot.

Another ***problem with valuation standards is the classification of housing itself***. According to several lawyers, dacha communities are not considered full-fledged living quarters. Despite the fact that residents of dacha settlements can populate their plots throughout the year, according to state standards and criteria, dacha settlements are listed as places of temporary residence. Accordingly, the compensation offered by the government will be much less than for a different type of residential plot.

 **Kyrgyzstan**

In Kyrgyzstan, residents' dissatisfaction is also associated with compensation issues. **Problems** arise mainly **when compensation must be paid by local governments** that do not have sufficient funds in the budget, do not have municipal housing, which could be used as compensation for the loss of housing.

***Practices:***

For example, in the city of Osh, the persons with whom the interview was conducted are mostly dissatisfied with the expropriation. They were provided compensation both in monetary terms and a land plot in the On-Adyr microdistrict, on a plot located 20 km from the city center, and where there is practically no infrastructure. Of the total number of families (22 families) that fell under the expropriation, only one family took advantage of this plot and built a house. And this is understandable. There are no utilities in this area. Electricity is supplied in a handicraft way, there is no water supply. Moreover, these land plots are almost impossible to sell due to their low price. Of course, the provision of a land plot in such a place does not please the residents, who consider the redemption price inadequate. Providing land is a good compensation, however, in this case, providing land in an area that is not practically suitable for habitation is not adequate compensation in exchange for land in the city center. But given that this is only a part of the redemption price in addition to monetary compensation, the authorities considered the redemption price adequate. At the moment, the land plot has no value for the residents of the central part of the city, which causes their discontent.[[42]](#footnote-43)

An interesting case for consideration is the one when home ownership falls under the expropriation, a part of the territory of which is used as a trading point, which is often the case in the south of Kyrgyzstan. So, one of the interviewers says that in a small room that was demolished, they baked samsa, pirozhki (pies) and sold them there. But, when determining the redemption price, this fact was not taken into account, as required by international norms, since the national legislation of the Kyrgyz Republic does not have a rule on including the cost of business losses in the amount of compensation. In courts, however, the application of international law is not practiced.

PF “Our Law” tried to apply the norms of international law in the protection of citizens' rights to housing, but they were not accepted by the court. After the adoption of the latest amendments to the Constitution of the Kyrgyz Republic, reference to the application of the norms of the international court became impossible.

Thus, the results of the focus group discussion showed that **the absence of norms in the national legislation of Kyrgyzstan regulating the issue of the redemption price, including not only lost profit, but even moral and psychological damage, violates the rights of citizens to housing.**

Nevertheless, there are **cases of positive experience of resettlement**, the basis of which was the international agreement of Kyrgyzstan on entering the Customs Union. Interviews with citizens during focus group discussions, who were subjected to expropriation in the village of Zhany-Turmush, Kyzyl-Kyshtak ayil okmotu (village administration), of Karasu rayon (district), Osh oblast (province), showed that they have no complaints to the amount of compensation received. This was facilitated by the fact that the amount of compensation was decided within the framework of international agreements.

 **Tajikistan**

Article 263 of the Civil Code of the Republic of Tajikistan states: “Termination of ownership of real estate in connection with a decision of a state body not aimed directly at the expropriation of property from the owner, including a decision on the expropriation of a land plot on which the owner's house, other buildings, structures or plantings are located, is allowed only in cases and in the manner established by legislative acts, with the provision to the owner of the equivalence of property and compensation for other incurred losses or compensation in full for losses caused by the termination of ownership.”[[43]](#footnote-44)

In Tajikistan, land is not a private property, unlike Kazakhstan and Kyrgyzstan. And in this situation, the state provides land for the construction of individual housing for a certain period.

When expropriating land plots for state or public needs, all losses are assessed at market value, which is determined taking into account the location of the land plot and paid by the persons in whose favor the land is expropriated. The cancellation of the right to use a land plot for state or public needs may be made after the allocation of an equivalent land plot to the land user with the right to alienate and compensate for other losses.

In case of demolition of a residential building in connection with the expropriation of a land plot for state or public needs, the owner of the demolished building is given an equivalent residential building or monetary compensation. According to the legislation of Tajikistan, the termination of ownership of real estate (including residential buildings) in connection with the decision of a state body to expropriate a land plot is allowed only with the consent of the owner. In this case, the owner must be provided with an equivalent property with compensation for other losses incurred or compensation in full for losses caused by the termination of the ownership. In the provision of other housing of equal value or in determining the cost of losses, the procedures and mechanisms for assessing residential buildings and premises are of great importance.

The size and procedure for determining and reimbursing the cost of houses (apartments), constructions and devices are established by the Government of the Republic of Tajikistan. Whereas the customer of the state appraisal is the local executive body of state power, and the expert appraisal institution under the State Committee for Investments and State Property of the RT is the executor of the examination.

To date, **there is no independent examination institution in Tajikistan**. According to the Instruction on the procedure for the legal registration of buildings, structures and other objects in cities, district centers, townships and villages of the Republic of Tajikistan “... the assessment made by the enterprise of technical inventory during the inventory of buildings, structures and other objects is mandatory when carrying out the demolition and transfer of buildings, taxation, insurance, notarial and other actions”. [[44]](#footnote-45)

If the house in which the residential premises is located is subject to demolition in connection with the allotment of land plots for state or public needs, or the house (residential premise) is subject to conversion into non-residential house (residential premise), the persons evicted from this house (residential premise) shall be provided with another comfortable residential premise. The obligation to provide another residential premise is assigned to the enterprise, organization, institution to which the land plot is allocated, or the house (residential premises place) to be converted is intended. This ***removes the responsibility of the state authorities to ensure human rights to adequate housing and fair compensation***.

***Practices:***

In interviews, respondents from Tajikistan noted that sometimes they were given the opportunity to choose the type of compensation, but the respondents were not always satisfied with the amount of offered monetary compensation. In some cases, other costs incurred in connection with the resettlement were reimbursed. To the question: “where do you live until your dispute is resolved?” the respondents noted that they rented temporary housing from their spouse's parents. If the state and the owner agreed on the payment of monetary compensation in exchange for the expropriated housing, then, as practice shows, in 15 - 20% of cases, compensation was paid before the eviction, in 80-85% of cases compensation was paid after the eviction.

 **Uzbekistan**

In *Uzbekistan* today, the issue of providing compensation for the withdrawn land plot is a conflict topic, when the amount of compensation is not proportional to the loss, or there is no compensation payment to homeowners at all.

These issues are often resolved at the level of political acts, such as resolutions of the Cabinet of Ministers or Decrees of the President of the Republic of Uzbekistan, namely:

* Decree of the President “On measures to radically improve the investment climate in the Republic of Uzbekistan” dated August 1, 2018 No. UP-5495 describes the cases when the expropriation of land plots for state and public needs is allowed, and compensation for such expropriation falls on extra-budgetary funds.
* The obligation to pay compensation and the provision of adequate housing for homeowners whose houses have been demolished is also defined in the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan “On judicial practice in housing disputes” dated February 03, 2006 (clauses 3, 8).
* Order of the President of the Republic of Uzbekistan dated August 3, 2019 No. R-5491 “On additional measures to unconditionally guarantee the property rights of citizens and business entities” [[45]](#footnote-46)

More than half of the participants in focus group discussions in Uzbekistan indicate problems related to the provision of compensation.

Currently, in Uzbekistan, the decision on expropriation is made by the local Parliament. On the basis of the decision, the residential quarter may become the property of the developer, who is also transferred the responsibility for paying compensation. Developers offer compensation, which consists of: (1) cash or (2) housing in a building under construction (at the level of foundation). In the first case, the compensation offered often appears to be below the market value of the demolished housing. In the second case, developers do not provide any legal document that would guarantee housing after construction is completed. **Developers** offer compensation and conclude payment norms, but they **do not hold back the terms of payment or do not pay compensation at all**.

***Practices:***

All survey participants in Uzbekistan unanimously voiced the issue of compensation, which was either reduced or there were no compensation at all. More than two thirds of the participants (70%) of the focus group discussion indicated that they did not received compensation by established norms. In setting compensation norms, construction companies often have a network of appraisal companies that appraise property at low prices, which directly affects the amount of compensation.

During discussions in focus groups held in 5 regions of Uzbekistan: the Republic of Karakalpakstan, Bukhara, Fergana and Khorezm oblasts (provinces) and the city of Tashkent, a tendency of underestimated compensation, partial payment of compensation amount, and sometimes even no payment of compensation amount was revealed. Only a few people indicated that they were happy with the compensation they received with the delay.

## Summary of the Section - The practice of providing compensation in CA countries

In general, there is a great dissatisfaction with the compensations received for the expropriated housing by the residents of Central Asia. Experts point out that in all countries there is a **dependence of appraisers and a lack of methodology for assessing housing, which leads to disproportionate compensation payments**. None of the four countries studied has set the independence of appraisal campaigns at a sufficient level, services for appraisal of expropriated property are paid from the state budget, which in itself creates a conflict of interest and creates doubts about their impartiality. Countries are encouraged to adopt fair mechanisms for assessing property to be demolished from other countries outside of Central Asia.

Residents of Tajikistan and Uzbekistan are in a particularly vulnerable position, where there is no private ownership of land, which affects compensation. It is worth noting that ***none of the legislation of the Central Asian countries complies with the guidelines regarding loss and costs, assessment of economic damage due to forced evictions*** and / or relocation, such as:

* penalties in connection with overdue mortgages and other loans;
* temporary housing costs;
* administrative and legal expenses;
* loss of wages and income;
* lost educational opportunities;
* costs of health and medical care, resettlement and transportation (especially in the case of resettlement far from sources of livelihood).

In cases where housing and land are also a source of livelihood for the evicted residents, ***business losses are not taken into account*** in assessing damage and loss.

Residents of all CA countries, whose households are affected by the demolition, suffer certain losses and damages before and during eviction, which are not always taken into account when calculating compensation. For example, when hiring a lawyer and challenging the decision of the authorities on the grounds of demolition, in independently challenging the amount of compensation in court, when hiring an appraiser to evaluate the expropriated property, the time costs for the hassle of eviction and the search for alternative housing are not estimated, neither is moral and psychological damage.

## 3.2 Defense procedures and cases of challenge in court

All individuals facing forced evictions or threats thereof should have the right to timely access to remedies. Such means, which include a fair hearing, access to a lawyer, legal aid, return, restitution, resettlement, rehabilitation and compensation, should, as far as possible, comply with the Basic Principles and Guidelines on the Right to Legal Defense and Redress for Victims of gross violations of international human rights law; and serious violations of international humanitarian law.

 **Kazakhstan**

In the legislation of Kazakhstan, the procedure for *protecting the rights of persons* whose land plot is alienated for state needs *is carried out in a judicial proceeding*. As practice shows, the main dispute usually is about the amount of monetary compensation for the forcibly expropriated land plot, real estate and losses, and not about the very decision of the local executive body to expropriate the land plot for state needs.

***Practices:***

The respondents in Kazakhstan expressed the opinion that the chance of a victorious outcome in the courtroom increases by joining the litigation and eviction processes of the media and NGOs. However, as it turned out in the course of further focus groups and case studies, this case cannot be taken as a last resort: involvement of the media does not always lead to a positive outcome. Moreover, the very fact of involving the media is a costly process from a financial point of view, and therefore inaccessible to all victims of eviction. Thus, most of the victims of eviction, again, may find themselves in a very difficult situation.

 **Kyrgyzstan**

In the Kyrgyz Republic, it is noted that *citizens rarely turn to law enforcement and judicial authorities to protect their rights, while they prefer to contact human rights organizations*. According to various estimates, there are about 200 cases of eviction and home expropriation campaigns in the country per year. At the same time, for 100 cases of eviction, there are three appeals to human rights NGOs. In addition to NGOs, residents can also apply to *GGUP*/SGLA (State Guaranteed Legal Aid), a government agency that provides free legal aid to vulnerable groups of the population.

***Practices:***

During the focus group discussion, residents did not confirm cases of contacting SGLA, explaining this by the low competence of the body and weak responsibility to protect the interests of the affected persons.

Practice shows that the court proceedings were about challenging the issue of the grounds of expropriation. Compensation issues are mainly resolved at the pre-trial level.

Kyrgyzstan has a positive experience of involving owners in the process of discussing the size of the redemption value, through their inclusion in the commission for discussing compensation issues. It should be noted that the practice of involving the population in the process of discussion and agreement has a positive conflict-free outcome. Of course, this is happening with the active assistance and insistence of local NGOs, and in regions where civil society is weak, participation processes do not work. Often, with the participation of NGOs, the amount of compensation is revised in favor of the population (with an increase of 25-50% of the originally proposed amount).[[46]](#footnote-47)

*Quote: Nurmatov Odilzhan, a representative of the Dostuk community (a border area with Uzbekistan in the South of the Kyrgyz Republic): “We were trained at Interbilim to protect and defend our rights to housing, and were able to insist on our inclusion in the commission of a government agency.* *Two people from us entered the commission. Of the 9 proposed amendments to the agreement, the commission accepted 7 our proposals. To increase compensation, we had to lobby our demands to the deputies of the Parliament of the Kyrgyz Republic together with NGOs, to voice them in the media. So the compensation from the original amount was doubled and brought to the sum of our assessment. But it cost us a lot of work and effort, we all held together to the end.”*

 **Tajikistan**

One of the ways to protect the rights of evicted citizens of the Republic of Tajikistan from forced evictions / resettlement is *the right of citizens to apply to the judicial authorities for protection of violated or disputed housing rights*.

Citizens of the Republic of Tajikistan have the right to:

- go to court with a claim for compensation for harm caused to the life, health and property of citizens, as well as the property of legal entities and public associations associated with a violation of urban planning legislation;

- demand, in the manner prescribed by law, to bring to justice those guilty of violating town planning legislation.

If a government body or an official during the eviction (or by the fact of eviction) violated or infringed upon the legal rights of a citizen, then the citizen has the right to appeal against their actions. A complaint is filed to a district (city) court by a citizen at his place of residence, or to a court at the location of a public authority, local government body, official, civil servant whose decisions, actions (inaction) are contested.

***Practices:***

Respondents in Tajikistan note that they *do not appeal against decisions of acts of state authorities* that have decided to expropriate a land plot or carry out demolition. The respondents attribute this to the lack of funds to pay for a lawyer, or believe that this is a pointless exercise, as well as another restriction that they could not talk about. In most cases, citizens did not apply to the courts with an appeal against the actions / inaction of officials.

In cases where citizens had representatives, they applied to a bar association or other association of lawyers. In 34 cases, citizens turned to public organizations for the provision of free legal aid to obtain advice, which they learned about through the media. Based on the results of the appeals, the citizens were satisfied with the quality of the legal assistance provided by public organizations. In Tajikistan, for every 100 cases of expropriation, an average of 10 human rights NGOs are involved.

 **Uzbekistan**

An analysis of the legislation of the Republic of Uzbekistan shows that *homeowners are not protected by law,* and developers often receive legal grounds for demolition. Moreover, corrupt schemes for obtaining permits for development prevent homeowners having a fair trial.

***Practices:***

Respondents in Uzbekistan note the incompetence of the judiciary and law enforcement agencies in protecting the rights of homeowners, which undermines confidence in the judiciary power.

During the focus group discussions, the respondents confirmed that they have no claims for compensation. This solution to the problem was obtained due to the following factors:

* In Uzbekistan, the number of non-governmental non-profit organizations (NGOs) specializing in protecting the rights of citizens to adequate housing is about 7 formal and informal organizations.
* On average, up to 2000 thousand complaints and appeals are filed per year; one organization has a workload of 300 appeals per year.
* In most cases, the practice of defense is ineffectual, issues can be positively resolved only with the participation and mediation of international organizations.
* There is a group in social media “Tashkent demolition” [[47]](#footnote-48) in the country, where public can watch the stories of residents, whose households are being expropriated through gross violations of the rights of the population. The group has 21 thousand subscribers.

Local NGOs, members of the CA network independently monitor violations of rights during eviction and expropriation of housing, record and inform decision-makers, and voice them on international platforms in the form of non-state alternative reports. [[48]](#footnote-49)

Uzbekistan has a limited number of non-profit organizations (NGOs) specializing in the right to adequate housing.

## Summary of the Section - Defense procedures and cases of challenge in court

Comparative table of participation of human rights NGOs in cases of home expropriation in Central Asian countries

|  |  |  |
| --- | --- | --- |
| Country | The number of cases of expropriation of housing (average per year) | Number of NGOs participating in the representation and protection in expropriation cases (per 100 cases) |
| Kazakhstan | 200 - 300 | 4-5 |
| Kyrgyzstan | 70 - 100 | 2-3 |
| Tajikistan | 400 - 500 | 4 |
| Uzbekistan | 500 - 700 | 5 |

In almost all countries, members of the CA Network recorded cases of pressure exerted by government officials on NGOs and human rights defenders protecting the interests of residents subjected to eviction and expropriation of housing.

In Kyrgyzstan, this is clearly expressed in relation to human rights defenders defending the rights and interests of ethnic minorities. Cases of government officials being held accountable for exceeding their powers and infringing on the honor and dignity of NGO employees were recorded only in Kyrgyzstan, which is reflected in the alternative report.

## 3.3 Eviction process

Procedural requirements to ensure that human rights standards are respected should include mandatory presence of government officials or their representatives during evictions.

Government officials, their representatives and eviction officers must identify themselves and provide residents with a formal eviction order. In order to ensure transparency and respect for international human rights principles in the eviction process, neutral observers, including regional and international observers, should be allowed into the process. Evictions should not take place during inclement weather, at night, during festivals or religious holidays, before elections, during school exams, or right before them.

 **Kazakhstan**

In Kazakhstan, evictions are executed by a bailiff based on a court decision. During eviction, the presence of at least two attesting witnesses is required. Forced evictions of citizens belonging to socially vulnerable segments of the population from the only residential premises on the territory of the Republic of Kazakhstan during the heating season are not carried out.

***Practices:***

Focus group participants in Kazakhstan told that some residents did not want to move to the proposed housing complexes in the city of Satpayev and were unhappy with the proposed monetary compensation. They decided to stay in their native settlement - in this case, the settlement of Rudnik. However, since most of the territory had already been transferred to the Kazakhmys corporation, which worked closely with government agencies, the presence of a small group of residents (in the Rudnik settlement) was also undesirable. Therefore, according to respondents, various cases of power and water outages, heating and infrastructure failures in general have become more frequent. These events led to the fact that some residents were forced to move to the offered apartments in the city of Satpayev.

Thus, one of the respondents noted the fact that, being the only tenant in his house, he was eventually forced to move to Satpayev. The reason for this was the fact that “they” constantly “broke the door locks” and, at some point, blocked access to heating. According to other participants, the school and kindergartens in their village were closed, and the bus, which “ran every 15 minutes,” was suspended. Moreover, fires and cases of looting have become more frequent in the village, with which the local “authorities have not done anything yet.”

Also, repair work is already underway in the village and the demolition of empty houses is underway, despite the presence of residents there. This has led to frequent interruptions in electricity, heating, and an almost complete lack of clean drinking water. In this situation of high risk to both health and life, the remaining residents are forced to agree to the conditions provided to them by the corporation and the akimat (state administration). In other words, residents are forced to move in a voluntarily - compulsorily manner (voluntary in theory but compulsory in practice).

 **Kyrgyzstan**

In Kyrgyzstan, the Government has not yet adopted a regulatory legal act describing the order and the procedure for expropriation, which contributes to the practice of eviction at the sole discretion of the authorized body. For example, international experts recommend carrying out the eviction process after offering an alternative housing option. That is, the state should not offer compensation in monetary terms, but the state does not care much about how and where a person will live. So, from the moment the money is received on the account of the residents affected by the expropriation, within the time period provided for in the contract, the authorities can demolish the house.

***Practices****:*

There are precedents when houses were forcibly demolished, without a preliminary conclusion of contracts and payment of compensation (Jalal-Abad city). In some cases, residents can agree on their own dismantling of their homes, and the removal of building materials that can later be used to build a new house. Often, representatives of the authorities agree with the residents and provide time for dismantling. During the eviction, in some cases, the authorities provided assistance, for example, in the transportation of a cargo. *In Kyrgyzstan, there are few cases of complete expropriation of housing for state and public needs. Practices often resort to partial home repossessions, in which the eviction process is rare.*

The issue of citizens who have been living in their homes for decades, but for some reason, have not registered their ownership, is an acute issue. Most often, people did not draw up documents because of their illiteracy, or the documents were simply lost, and their recovery is not possible.

In practice owners might face the situation when the amount of compensation is reduced during the assessment. The authorized bodies, through the court, recognize the houses of such citizens as unauthorized buildings subject to demolition. The courts do not really try to sort out such cases, and, as a rule, take the side of the authorized bodies. As a result, citizens are left not only without their homes, but also without compensation. This practice is contrary to the norms of international law, as well as the recommendations that prescribe the payment of compensation, despite the presence of the owner's title documents.

 **Tajikistan**

The state appraisal of housing is carried out by a state-owned enterprise (GUP/SUE (State Unitary Enterprise) “Narhguzor”) under an agreement with local executive bodies of state power. It should be noted that the Urban Planning Code of the RT provides for the involvement of an independent appraiser (Article 80), but in practice there is no institute of independent appraisers.

***Practices:***

Respondents in Tajikistan noted that they voluntarily left their home within the period of a month or a year that they were given. In practice, despite the fact that the valuation was below market value, residents had to agree. On the allotted land plot in July 2015, “Khusnoro-1” LLC (ООО “Ҳусноро-1”) entered into agreements with 32 owners of residential houses in the private sector of Dushanbe. At the same time, LLC Khusnoro-1 under this agreement undertakes to pay all the costs of the owners of the demolished houses and temporary residence in rental housing until the completion of the construction of new buildings. Residential buildings were demolished in 2015, the territory was freed up for construction sites, but so far the construction of new buildings has not begun. The accommodation of the owners of the demolished houses in rental housing was paid for by LLC Khusnoro-1.

 **Uzbekistan**

According to the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan “On additional measures to ensure guarantees of property rights of individuals and legal entities and to improve the procedure for expropriation of land plots and provision of compensation in connection with expropriation” dated 2019, the procedure for the eviction process is not defined in detail. The basis for the demolition is the decision of the relevant local authorities, which should receive a positive assessment from the justice authorities. The only clause of the Regulations, to one degree or another affecting the eviction process, assigns the task of demolition to the initiator of the demolition, but also stipulates the fact that, by agreement, the demolition can be carried out by the owner at his own expense and with the possibility of removing the construction materials.

***Practices:***

In practice the process of eviction of residents is often accompanied by threats. For example, residents are threatened that if they do not leave their homes, they will not receive any temporary or future long-term alternative housing. Residents who question, disagree, or passively or actively resist eviction, are intimidated and being informed that any attempt to resist will be considered an act of violation of public order or disobedience to the decrees of the President of Uzbekistan.

As for compensation payments, they are often issued to victims with a delay or not issued at all. In early July 2019, the Ministry of Justice informed the public that the total amount of public funds earmarked to compensate people affected by evictions caused by the need for development amounted to 600 billion Uzbek Soms. By the end of July 2019, the unpaid amount of compensation amounted to about 300 billion Uzbek Soms. This sum is reported to be the total amount that has not yet been paid to those affected by evictions caused by the need to develop the city of Tashkent and the following regions: Tashkent, Fergana, Kashkadarya and Namangan Oblasts (provinces).

## Summary of the Section - Eviction process

Thus, in all of the four Central Asian countries studied the eviction procedures are not standardized. Representatives of public organizations, media and international institutions on the part of government agencies are not officially invited to monitor, as recommended by international standards. However, these bodies are not prohibited from taking the initiative and participating as observers on their own.

## Conclusions for Chapter III

Summing up the legislation and practice of the CA countries during the EVICTION, the following conclusions can be drawn:

1. The legislation of the CA countries is not capable of fully guaranteeing the protection of private housing property. The practice of eviction and the provision of compensation occurs with gross violation of rights, which is close to the indicators of forced expropriation of housing. There are practically no cases of bringing authorized bodies to justice by the supervisory bodies of CA countries.
2. Compensations in all CA countries are not commensurate and do not correspond to market prices. The amount of compensation is set by an independent appraisal company, attracted by the state, which does not always make a decision in favor of the population and does not coordinate its conclusions with them. When calculating compensation in all CA countries, losses incurred by citizens are not taken into account, in addition to the price of the property being bought-out. Cases of involving citizens in the process of discussion of compensation, contracts, and the eviction process are present only in Kyrgyzstan, in other CA countries such practice is very weak.
3. The CA states do not provide protection to citizens in the event of the demolition and expropriation of housing. Guaranteed legal assistance from the Central Asian states is not in demand among the affected persons.
4. For all cases of eviction and expropriation of housing for state and municipal needs, there are not enough civil society institutions to protect the interests of the population. In all 4 countries, there were cases of pressure being exerted on the NGO sector and human rights organizations.
5. Despite the fact that in Kazakhstan and Uzbekistan the processes of expropriation of housing for state and public needs are regulated by separate by-laws, in practice this does not help to protect the rights of citizens to housing. In Tajikistan and Kyrgyzstan, the legislation does not contain provisions on the procedure for eviction and expropriation of housing.
6. However, the practice of involving the population in the discussion process in Kyrgyzstan, in contrast to other Central Asian countries, is much better. There have been cases of increasing compensation in favor of residents, despite the absence of the regulatory norm. Gross violations of rights are noted in Tajikistan and Uzbekistan.

# CHAPTER IV. Compliance of the national legislation and law enforcement practice of the CA countries with international norms of expropriation (buyout) of housing AFTER EVICTION

## Summary of Chapter IV

States are responsible for providing fair compensation and sufficient alternative housing, and must **do so immediately upon the eviction**. At a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to:

* essential food, potable water and sanitation;
* basic shelter and housing;
* appropriate clothing;
* essential medical services;
* livelihood sources;
* fodder for livestock and access to common property resources previously depended upon;
* education for children and childcare facilities.

States should also ensure that members of the same extended family or community are not separated as a result of evictions.

According to international recommendations: *“...all resettlement measures, such as construction of homes, provision of water, electricity, sanitation, schools, access roads and allocation of land and sites, must be consistent with the present guidelines and internationally recognized human rights principles, and completed before those who are to be* ***evicted are moved from their original areas of dwelling****.”*

This section covers issues of legislative framework and enforcement practice of Central Asian countries compliance with international norms of expropriation (buyout) of housing AFTER EVICTION.

## 4.1 Alternative housing and conditions in a new place of residence

 **Kazakhstan**

Kazakhstan’s Supreme Court Resolution states that “*when resolving eviction disputes with provision of another suitable dwelling due to expropriation of a land plot for state needs, courts should not satisfy such claims if the executive body provides the owner with temporary residence (temporary housing) or unsatisfactory housing [[49]](#footnote-50)*. That is, regulatory legal acts have been tightened and measures have been taken to reduce cases of homelessness.

***Practices:***

In fact, adequate housing and plot of land are transferred and restitution is paid until the ownership termination and only to owners of expropriated facilities.

However, another issue is area location where the proposed housing alternatives are located. Thus, respondents mentioned that the new housing complex, built for eviction victims, is located near the tuberculosis hospital. Moreover, there was also a “power station next to the playground”. In other words, the area provided by state to eviction victims does not guarantee complete security for citizens’ health.

Another restitution related issue is quality of alternative housing. Thus, victims of eviction can receive both financial compensation covering housing costs and apartments in Satpayev city built specifically for residents of evicted villages. However, conditions of provided apartments were not considered satisfactory by the focus group participants. Moreover, according to the participants, apartments were not cost equivalent.

One of the focus group participants - the only one who was relocated of those who remained in the village - says: *“The problem is with everything. Roof is the problem. Also everyone is pushed to the fifth floor - no matter what age: 20 years old, 70 years old ..."*According to another participant, apartments that were provided were not "*new"*: *"You know, when houses are just built ..., first of all, everything should be new. You drive into the yard - asphalt is already used off and does not meet any standards. Everything falls apart, everything falls apart. You enter the apartments ... the fifth floor, in general, in spring everything was completely flooded”.* Thus, proposed alternative compensation forms are not in good condition. **This leads to** the next problematic point in the case of village residents - **chaotic and disorganized resettlement, with no preliminary family needs assessments.**

**Low transparency in decision-making** leads to conflicts and distrust of residents towards each other. So, citizens who owned small land plots or houses with small square area could get apartments of bigger worth. In addition, these residents could get apartments on lower floors, and have better living conditions. So, in words of the respondent: *“… there are people who live on second floor - they have no land, nothing. They have a three-room apartment - let's say, 17 million and plus-minus. A person lives on the second floor, not on the first. There is no land, nothing ...”.*

Although it is possible that chaotic resettlement is not the only reason behind such uneven distribution of new housing. **The reason could be corruption and abuse of power** by executive bodies responsible for the resettlement process. Corruption and resale are some of causes for chaotic resettlement. According to focus group participants, very few are satisfied with the resettlement policy so far. Only those “who connected to akimat” were satisfied. Respondents mentioned that in majority of cases “good” apartments on lower floors were allocated to residents who did not have equivalent housing properties previously. The reason for this injustice is corruption and speculation of the Satpayev city akimat.

The last important point in the group discussion was the fact of damage difficult to express in figures or reports - **socio-economic and psychological damage**. By the end of the eviction process, victims find themselves in situations where their previous life order has been completely ruined, and they have been forced to face new challenges. Several focus group participants stated that their previous housing was much safer, comfortable and had good infrastructure: *“Yes, we had everything there: jobs, shops, restaurants, hospitals, and a park. - Two kindergartens, hospitals. There were five schools. There people would have mass events, community center was quite active”.*

It is as well possible that similar infrastructure is available in the new residence place, but as already mentioned above, it is located in not that safe city area. Moreover, respondents indicated that in their previous residence, **they had jobs**, or they could be engaged in individual entrepreneurship. However, **this factor was not taken into account during the resettlement process, since only property size was compensated.**

Additionally, focus group participants also stressed the fact that contacts with former neighbors have been broken or lost. So, there were frequent conflicts over who will live where. **Thus, social ties between inhabitants of the evicted areas were broken**. Although this is the most subtle damage, this fact causes irreparable harm to eviction victims’ mental state. For instance, it was repeatedly noted that people were driven to despair and depression, sometimes with suicidal outcomes or compromised health. One of the participants noted: *“People are driven to suicide. We have those who did not survive court cases – they died of heart attacks”.* Speaking personally, he noted: *“I have been forced to become a broke. My children do not see meat, they don’t eat even chicken legs. I have three children".*

When asked whether the focus group participants continued to share their situation using media, social networks or public rallies, they replied: *“- I do. I share my story on Facebook. But what is the point? - I gave money, appealed. Money is everywhere. Where I get the money? - They don't allow rallies [to hold]. NSC, DIA started persecuting us, they followed. It's like we're a criminal gang."* Survey results revealed that **focus group participants lived with feeling of surveillance** and constant stress. Coupled with persecution by executive authorities and general insecurity of the​​ residence area - we get huge imperceptible damage to the mental state.

 **Kyrgyzstan**

Kyrgyz Republic also has a number of issues that residents face after eviction. Article 12 of the Constitution of the Kyrgyz Republic provides that *“alienation of property for public needs defined in the law may be effected upon the decision of the court with ensuring of* ***prior and equitable compensation for the value of such property*** *as well as for other losses incurred as a result of such alienation.”[[50]](#footnote-51)*

In addition to the Constitution of the Kyrgyz Republic compulsory prior compensation, is also ensured by the Housing Code of Kyrgyzstan and Resolution of the Plenum of the Supreme Court of the Kyrgyz Republic "On some issues arising when considering cases on challenging decisions, actions (inaction) of state bodies and local self-government bodies related to provision and acquisition of land plots.”[[51]](#footnote-52)

***Practices:***

Despite the Constitution of the Kyrgyz Republic having direct effect and obliging to resolve compensation issues prior the eviction, things are different in practice. Often case, compensation issues remain unresolved even after expropriation and eviction, and citizens have to solve problems for more than one year.

Problems after eviction are usually explained by the **absence of a specific regulatory legal act** that should have been adopted by the Government in accordance with the Land Code of the Kyrgyz Republic, which would have laid down **specific mechanisms for preliminary compensation**, as well as regulated issues arising upon eviction.

For instance, when confiscating housing in Osh for the needs of Dostuk customs checkpoint (border area with Uzbekistan), out of 34 families, one family did not manage to improve their living conditions as the property actually belonged to three sisters, although it was legally registered to one of them. When disposing of housing, compensation took into account the interests of three separate families, all women were single mothers. At the same time, it should be noted that the rest 33 families of ethnic minorities settled well. Compensation was adequate and paid before evictions. All of them built new houses or bought ready ones within the area of their own ayil okmotu. Residents think it is very important when families move within their communities to one place. This allows people to preserve social ties, prevent negative cases associated with perception of displaced persons by residents of communities they move to.

Another focus group, mainly consisting of ethnic minorities, who have been challenged by partial expropriation to widen the road at Monueva street in Osh city, were dissatisfied with the process and results. They were provided restitution and compensatory land plots in On-Adyr microdistrict, an area of ​​the mono-ethnic Uzbek community. But, in fact, of the total number of evicted families, only two families used this site and built housing. Of these two families: one family does not live there, another one resides there and suffers daily losses. This is understandable, as the new residence area have practically no utilities. Electricity is supplied in a handicraft way, there is no water supply. Moreover, these land plots are almost impossible to sell due to low prices. Of course, land plots in such location could not possible please residents, who **consider compensation inadequate, since their previous housing was in the city center.** But given that this is only a part of compensation in addition restitution, authorities considered this price adequate.

In fact, land plots as compensation have no value for residents of the city center, which causes discontent. Often they are offered land plots without infrastructure and outside the city. After expropriation of housing and compensation payment, there was no discontent that some residents were paid more and others less. Since commission included human rights organizations and decisions ensured that all residents to be provided with calculation of proposed compensation. In addition, evaluators presented **clear calculation forms**: compensation for land plots was calculated in accordance with the size of the seized land, and facilities were assessed using a different calculation formula.

Special attention should be paid to acquisition of households with commercial points and shops. For example, a part of the land plot was confiscated from one family, where made and sold samsa, pies and other instant food products. However, when determining compensation, this was not taken into account, since there is **no norm on including costs of a business loss in compensation in the national legislation**. And international legislation is not applied in courts.

“Our Right” PF tried applying international legislation to protect citizens' rights to housing, but they were not accepted by the court. After latest changes in the Constitution of the Kyrgyz Republic in 2016, practice of referring to international treaty obligations in courts has weakened.

In Kyrgyzstan, there is **no state or municipal housing stock** that could be used as temporary housing for the period between demolition of old and construction of new housing.

In Kyrgyzstan, as well as in Kazakhstan, residents suffer certain losses due to evictions, which are not always taken into account when calculating compensation, and consist of costs of:

*- lawyer services;*

*- services of independent evaluator companies (in case of disagreement with results of the initial evaluation);*

*- construction services when building a new house;*

*- renting housing during new housing construction*

*- reduction in family income, since people must spend certain time on construction of new housing.*

In Kyrgyzstan, the total cost of losses can reach $ 5,000.

 **Tajikistan**

The Republic of Tajikistan, along with other Central Asian countries, has ratified the International Covenant on Social, Economic and Cultural Rights and is committed to implementing the right to adequate housing. However, just like in Uzbekistan, **housing land in Tajikistan is not privately owned by the residents.**

Land plots with residential and household buildings belonging to citizens based on personal ownership rights regardless of the form of ownership, may be transferred to enterprises, institutions and other organizations, by decision of the Government. These entities, in turn, should compensate the costs out of their own funds. Legal entities and individuals who get allotted land plots compensate residents the cost of perennial plants and crops at fixed prices. Under such conditions, it is much more difficult to challenge legality of housing acquisition in court than in Kazakhstan and Kyrgyzstan. At the same time, in Tajikistan, as in other countries of Central Asia, there are no specific national norms regulating situation of residents after eviction and providing certain guarantees.

***Practices:***

During the monitoring after the eviction of citizens in connection with the expropriation of property for public needs, the following consequences were observed.

1) In case new multi-storey apartment buildings constructed on the site of the demolished residential buildings, owners of demolished housing are provided with temporary rental housing during eviction/resettlement. In accordance with notarized demolition compensation agreements, costs of temporary rental housing are paid by the construction company.

Living in rented housing, owners of demolished apartments wait for completion new buildings, state construction acceptance and commissioning of new building in order to receive entailment documents for new apartments and permission to move in for permanent residence.

2) In case state, social, cultural, administrative facilities constructed on the site of demolished residential buildings, state body, institution or organization responsible for construction works, provide compensation to evicted owners of demolished houses (apartments) based on notarized agreements as one-time payment of the market value of demolished housing or, with their consent, or equivalent housing in new buildings nearby the permanent residence.

In case of disputes about terms of agreement on compensation, owners of demolished housing have the right to defend their violated rights to decent compensation in court.

When established unlawful actions of officials under the Criminal Code of the Republic of Tajikistan, the evicted / resettled citizens have rights to appeal to law enforcement agencies to bring officials to liability and restore violated rights.

The Republic of Tajikistan has **common practice of holding members of state working commission** to account for misappropriation and embezzlement of public funds allocated to compensate citizens for demolition of private residential buildings (apartments) in execution of the Master Plan for Development of Cities and Districts in the Republic of Tajikistan.

Also, there are facts of criminal prosecution of heads of construction companies for theft of funds from citizens participating in shared construction of residential buildings.

There are also cases of infringement of rights of owners of demolished houses (apartments) by understating compensation size or providing apartments that do not meet building or sanitary and epidemiological standards. In such case, citizens are protected in courts or by bringing unscrupulous officials to criminal liability.

In cases of litigation, victims of evictions / resettlements, who suffered from actions (inaction) of unscrupulous officials, can further suffer from unreasonable delay in trial or investigation. In these cases, victims of forced evictions/resettlement have to endure inconveniences in housing conditions and lack of financial support for families.

 **Uzbekistan**

While in Kyrgyzstan and Kazakhstan people do not get evicted until getting restitution or compensation, or until they have been allocated land plots for housing construction, **in Uzbekistan the practice of providing alternative housing and payment of monetary compensation is negative.**

***Practices:***

Focus group participants pointed out facts of homeowners not being protected by law, and developers often receiving legal documents for demolition. Moreover, corrupt schemes for obtaining permits do not allow homeowners a fair trial. An increase in homeless residents should be expected in this situation. When people do not stay on the streets, it does not mean there are no homeless people in the country.

The fact that those who lost their homes and did not acquire a separate housing again is a characteristic of homelessness, when whole families are forced to rent apartments and spend most of their income on rent, or forced to live with relatives.

Following demolition/evictions/relocations, observations were carried out based on results of dialogue with local authorities/developers or by court decision to reveal the following:

* If new multi-storey buildings constructed on the site of demolished residential buildings, owners of demolished housing are provided with temporary rental housing during demolition / eviction / relocation. In 58% of cases this happened without notarized agreements on provision of compensation for demolished housing, compensation for temporary rent, etc. In other cases, the process of transferring a tenant to a lease is carried out based on written agreement between tenants and developer/company. Survey results showed that in 15% of cases, the rent is paid at by the construction company, in other cases, tenants partially paid the rent themselves.

Living in rental housing, owners of demolished housing wait for construction of new buildings to be completed, state acceptance of facility and commissioning of the new building in order to obtain entitlement documents and permission to move in for permanent residence. Moreover, in 18% of cases, the contract term expired and was not renewed despite tenants’ demands. In 28% - moving into new houses took place without signing acceptance certificate and registration of the housing rights.

* In case state, social, cultural, administrative facilities constructed on the site of demolished residential buildings, state body, institution or organization responsible for construction works, provide compensation to evicted owners of demolished houses (apartments) based on notarized agreements as one-time payment of the market value of demolished housing or, with their consent, or equivalent housing in new buildings nearby the permanent residence.

Based on monitoring results, dispute would occur in 75% of cases due to improper execution of agreement on provision of compensation, and only in 56% of them owners of demolished housing would receive adequate compensation in court. When violations of the Civil Code, the Administrative Code or the Criminal Code of the Republic of Uzbekistan would occur and established, evicted/resettled citizens had the right to appeal to the Court to restore their rights and demand charges for responsible officials. According to defence representatives the effectiveness of courts is quite low, with regards to rights of residents. Only 10% of decisions satisfy and restore the rights of residents. In 90% of cases, courts side with developer companies or representatives of Khokimiyat.

There are also cases of infringement of rights of owners of demolished houses (apartments) by understating compensation size or providing apartments that do not meet building or sanitary and epidemiological standards. In such case, citizens are protected in courts or by bringing unscrupulous officials to criminal liability.

In cases of litigation, victims of evictions / resettlements, who suffered from actions (inaction) of unscrupulous officials, can further suffer from unreasonable delay in trial or investigation. In these cases, victims of forced evictions/resettlement have to endure inconveniences in housing conditions and lack of financial support for families.

During monitoring in only one district of Tashkent - Chilanzar, 17 families were identified using their own finances on rent while waiting for the court decision. In a number of cases, monitors observed illegal interference by officials of Khokimiyat, Prosecutor's Office, and DIA in negotiations between residents and representatives of construction companies.

**The Government of Uzbekistan**, after conducting research and discussing its results with representatives of state agencies and human rights organizations, **taking into account the negative practice, adopted a new by-law[[52]](#footnote-53)** that toughens responsibility for acquisition of housing. Thus, land acquisition is allowed only under consent of the owner or by agreement on based on Decrees of the President of the Republic of Uzbekistan, the Cabinet of Ministers and the Parliament of Uzbekistan. And decisions are made only when there are sufficient resources to compensate for damage to owners and a positive assessment of benefits. Further, territorial khokims issue a resolution on demolition of real estate objects located on acquired land plot only if there is a positive conclusion of justice authorities. A compensation agreement (subject to mandatory notarization) is to be concluded between initiator of land acquisition and a property owner. The agreement specifies the amount and type of compensation, payment terms and other conditions. Demolition is allowed only after compensation specified in the agreement is paid to the owner or court decision (if there is a dispute).

However, the situation with expropriations has only improved as little as 2-3% since the beginning of 2020, after the new procedures for land plots acquisition and provision of compensations came into effect. **Residents still experience arbitrariness from local authorities, and housing acquisitions are accompanied by gross violations**, where victims cannot independently defend their rights to property and fair compensation.

Overall study results reveal that Central Asian states do not provide the necessary facilities, services and economic opportunities on the proposed compensatory sites; The time and financial costs of commuting to and from work or accessing basic services place undue pressure on budgets of low-income households;

## 4.2 Advocacy of population issues at the local and international levels

Every country faces almost similar issues in the sphere of eviction and expropriation of housing for state/public needs; however, every country has its own specific features. In view of frequent and gross violations of citizens’ rights during evictions and expropriation of housing, as well as due to frequent pressure on human rights organizations, NGOs in Central Asia have joined the CA Network “Right to Adequate Housing”.[[53]](#footnote-54)

NGOs and members of the CA RAH Network deal with the citizens’ rights protection during expropriation of housing in their own countries; train and support victims of evictions in court; and voice and lobby the citizens’ interests among higher authorities in CA countries. The CA RAH Network was established in November 2018 and is aimed at strengthening joint efforts at the regional level. Members of the CA Network include 8 expert human rights organizations from Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan. Detailed information on the Network activities can be found at the following link [https://righttohousing.net](https://righttohousing.net/)

One of the components of the report on the work of the Central Asian Network on the Right to Adequate Housing for 2019 is to improve the regulatory environment in CA countries on the right to adequate housing, lobbying the interests of citizens at the national and regional levels.

Over the year and a half of its existence, the CA Network submitted a number of communications to local and international authorities to draw attention to gross violations of the citizens’ rights that increase tension in the society and result in illegal public responses.

**In 2019, the CA RAH Network members conducted six joint advocacy activities at the regional level, and nineteen events among the CA Network member countries, according to 2019 Network authors’** [**report**](http://ichrptj.org/ru/blog/set-centralnoy-azii-po-pravu-na-dostatochnoe-zhilishche-rezultaty-deyatelnosti-za-noyabr-2018-0)**.[[54]](#footnote-55)**

One of the components of 2019 CA RAH Network report is aimed at improving legal environment related to the right to adequate housing in CA countries, lobbying interests of citizens at the national and regional levels.

***Practices:***

So, on November 23, 2018, members of the Network appealed to the Secretary of State and Prosecutor General of Kazakhstan on the fact of beating a human rights defender in the capital of Kazakhstan. The authors of the statement regard the incident as a violation of the constitutional rights of citizens to adequate housing, as well as to protection from forced eviction, to receive adequate compensation.

In addition, on 30 July 2019, the Network members submitted an open letter to the President of Uzbekistan, Shavkat Mirziyoyev, requesting him to take appropriate measures ensuring the right to adequate housing; recognizing the importance of international cooperation in this regard, based on free consent; as well as ensuring the rule of law, strengthening law and order to protect social, economic, political and other rights and freedoms of individuals, recognizing human rights and freedoms as supreme values by authorities and officials.

Each Network member conducted research and collected evidence in his/her country with regard to expropriation of housing for public and state needs that was rather forcible than voluntary alienation. Arguments were presented to the Government representatives of the countries, followed by a number of measures improving the legal framework and practices in CA countries with regard to forced evictions.

 **Kazakhstan**

In Kazakhstan, the Public Organizations Network on Social, Economic and Cultural Rights was established in 2019 supporting to resolve expropriation of housing issues. Eight public organizations from different regions in Kazakhstan joined to prevent illegal demolitions. That year, the Fund for Parliamentarianism in Kazakhstan conducted the research on expropriation of housings, and the research findings were submitted for public review with the Kazakh PM and Government participation. Following the review, the working group was established to amend the Kazakh legislation involving the CA RAH Network members. In 2020, the working group drafted amendments to four current laws in Kazakhstan regulating procedures for expropriation of housing for state needs, and submitted them to the Mazhilis (the Parliament) of the Republic of Kazakhstan for further consideration and adoption.

 **Kyrgyzstan**

The Institute of the Ombudsman of **Kyrgyzstan** held expert consultations in the country in November 2019 with the aim of discussing the results of a study on the expropriation of housing conducted by members of the CA Network of the PF “Our Pravo” (“Our Law” NGO) and the Osh branch of the PA “MC Interbilim”. Based on the consultations, eight recommendations were adopted to prevent forced expropriation of housing. One of the recommendations concerns the development of the order and procedures for the expropriation (buy-out) of housing for public needs. For the first time, the report on the study in the field of restricting the rights of citizens was included in the annual report of the Ombudsman of the Kyrgyz Republic to be presented at a session of the Parliament of the Kyrgyz Republic.

As a result of expert consultations, a working group was created under the Ombudsman to develop a draft Regulation of the Government of the Kyrgyz Republic”On the procedure for expropriation of housing for public needs.” The draft bylaw in 2020 was developed with the participation of experts from the CA RAH Network and received positive comments from local and international experts; currently it is at the stage of lobbying the Government of the Kyrgyz Republic for its further consideration and adoption.

 **Tajikistan**

In **Tajikistan**, also in 2019, members of the CA network of PA “Hukukshinoson” and PA “Pamir Bar Association” conducted studies on the expropriation of housing, the results of which were submitted for wide discussion with the participation of representatives of the Government of the Executive Office of the President.

Coordinator of the RAH Network, the public organization “Independent Center for the Protection of Human Rights”, takes part in the development of the draft Housing Code of the Republic of Tajikistan. The members of the CA network have lobbied for a chapter in the draft code that strengthens the rights of citizens during expropriation of housing.

 **Uzbekistan**

In Uzbekistan, by the efforts of organizations of CA network members, the NGO “Institute for Democracy and Human Rights” and the NGO “Humanitarian Legal Center” were carried out in the field of violations of citizens' rights during the expropriation of housing. The facts of gross violation of citizens' rights during the expropriation of housing were announced during a round table in the summer of 2019, which were accompanied by appeals to the President of the Republic of Uzbekistan with a request to take urgent measures on illegal actions of khokims (governors) on the ground and to suppress the facts of forced eviction.

Civil society activists also filed complaints to the UN Special Rapporteur on the right to adequate housing. The President of the Republic of Uzbekistan reacted to the appeals of representatives of civil society and adopted a number of norms regarding laws and by-laws in the field of preventing gross violations committed by the state and investors. These norms are reflected in the Regulation “On the procedure for expropriation of land plots and provision of compensation to owners of real estate”, approved by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated November 16, 2019 No. 119, which came into force in January 2020. According to the new by-law, it is prohibited to evict and expropriate housing without prior and full compensation from the initiator of the expropriation; the procedure for open discussions of expropriation procedures with owners is also regulated.

The CA Network members lobby issues that are not resolved nationally at the international level in the form of non-governmental reports.

The coordinator of the CA regional network on the PWM Ms. Sh. Davlatova made a presentation at the OSCE / ODIHR meeting (Warsaw) on the situation in the four CA countries in terms of forced evictions, based on the results of country studies.

At the same time, in October 2019, at the 80th session of the UN Committee on Urban Development, Housing and Land in Geneva, Switzerland, the network member experts from Kyrgyzstan presented facts of violations of citizens' rights to adequate housing. NGOs in Kyrgyzstan have a good experience in submitting communications to the UN Treaty Bodies. NGOs submitted their alternative reports to the UN on gross violations of citizens' rights to adequate housing, namely, expropriation of housing, three times: in 2014, to the UN Committee on Economic, Social and Cultural Rights (CESCR); in 2018, to the UN Committee on the Elimination of All Forms of Racial Discrimination (CERD); and in 2019, to the UPR.

In 2019, the NGO network in Kazakhstan developed and submitted alternative reports to the UN UPR and to the CESCR on citizens’ rights violations during expropriation of housing, with a view to include them in the recommendations to the Government to prevent forced evictions. The report is based on the findings of studies related to expropriation of housing.

On the part of civil activists of the Republic of Uzbekistan, an individual complaint was drawn up and submitted in 2019 to the UN Special Rapporteur on the Right to Adequate Housing and the UN Special Rapporteur on the Preservation of Cultural Heritage about gross violations of the rights of the population by the authorities during the expropriation of housing, as well as about the damage caused to cultural monuments during reconstruction the cities of Khiva, Samarkand and Bukhara.

Over the past 10 years, the CA countries have adopted a number of UN recommendations to improve the situation of citizens in the area of the right to adequate housing. However, CA countries do not always fulfill their international treaty commitments. Below is the recommendation of the UN Committee on Economic, Social and Cultural Rights to the Central Asian countries regarding the observance of the rights of citizens during expropriation of housing. [[55]](#footnote-56)

 **Kazakhstan**

In relation to the Republic of Kazakhstan

At its 12th-14th sessions on 10-11 May 2010, and at its 24th-25th sessions on 19-20 May, and in its concluding observations the Committee on Economic, Social and Cultural Rights urges the State party to adopt appropriate legal framework governing urbanization projects, with a view to ensuring that forcibly evicted persons should be adequately compensated and/or relocated, taking into account the Guidelines approved by the Committee in its General Comment 7 on forced evictions. The Committee also draws the State party attention to the key principles and guidelines on development-based evictions and displacement (see document A/HRC/4/18) developed by the Special Rapporteur on adequate housing.

 **Kyrgyzstan**

In relation to the Republic of Kyrgyzstan

The Committee on Economic, Social and Cultural Rights considered the combined second and third periodic reports of Kyrgyzstan on the implementation of the International Covenant on Economic, Social and Cultural Rights at its 22nd and 23rd meetings, held on 1 and 2 June 2015, and at its 50th meeting, held on 19 June 2015, adopted the following concluding observations.

The Committee notes with concern:

(b) Lack of adequate advice and compensation in the event of forced evictions (art. 11).

Recommends that the State party shall:

(a) Ensure that, in cases of justified eviction or resettlement, it is carried out in strict accordance with the provisions of international human rights law on this matter;

 **Tajikistan**

In relation to the Republic of Tajikistan

The Committee on Economic, Social and Cultural Rights considered the combined second and third periodic reports of Tajikistan on the implementation of the International Covenant on Economic, Social and Cultural Rights at its 4th and 5th sessions held on 24 and 25 February 2015, and at its 20th session held on 6 March 2015, and adopted the following concluding remarks.

The Committee recommended for the State party to ensure that evictions are carried out in accordance with international human rights law and establish effective procedures for the legal protection of forcibly evicted persons. In this regard, the Committee draws the attention of the State party to its general comment No.7 (1997) on the right to adequate housing: forced evictions.

 **Uzbekistan**

В отношении Республики Uzbekistan In relation to the Republic of Uzbekistan

The Committee on Economic, Social and Cultural Rights considered the second periodic report of Uzbekistan at its 23rd and 24th meetings, held on 13 May 2014, and adopted the following concluding observations at its 40th meeting, held on 23 May 2014.

The Committee regrets about the lack of information on the payment of adequate compensation in the event of eviction. It is also concerned about the fact that alternative housing in the event of eviction can be provided only to certain categories of citizens and that persons deprived of parental rights may be evicted without providing them with alternative housing if their cohabitation with children was found to be impossible (Article 11).

The Committee reiterated its recommendation for the State party to take appropriate measures, including legislative ones and other measures, to provide all evicted persons with alternative housing or adequate compensation, taking into account the Committee's general comment No. 7 (1997) on the right to adequate housing.

## 4.3 Cases of expropriation of housing in CA countries during COVID-19

Initially, the CA network members did not plan to reflect the cases of housing expropriation during the period of 2020 in this report, and planned to limit themselves to the results of processing country studies. However, the network members considered it correct to present information on the topic under study from January to July 2020 based on country monitoring reports and to provide the reader with an opportunity to receive fresh information “here and now”.

The coronavirus in CA countries has corrected many vital situations in social and economic areas. However, cases of forced eviction and expropriation of housing during “stay at home” situation do take place.

This is especially noticeable in the Republic of Uzbekistan.

The government of **Uzbekistan** did not announce the ban on evictions during the pandemic. But in each region, oral orders were issued by Khokims[[56]](#footnote-57) (Governors) to suspend evictions under conditions of and during quarantine. It is difficult to count the evicted people due to restrictions on movement and meeting both the people being evicted, as well as those subject to forced eviction. Despite the verbal orders of the local authorities, in Bukhara alone, the members of the CA RAH network suspended the artificial bringing of 16 families to eviction. However, in Gulbahor village, Yangiyul rayon, Tashkent oblast, 14 buildings were demolished, which were prepared for living to varying extent - among them there were several residential premises. The order to demolish “unauthorized buildings” was issued by the district prosecutor, under the pretext of conducting examination, who seized from the owners cadastral documents and decisions on the provision of land plots. Taking advantage of the quarantine period, representatives of the authorities, without notification of the upcoming demolition, without providing reasons, without a court decision, without having the authority, and with the participation of the district deputy khokim, carried out the demolition.

The network members recorded cases when the demolition was carried out in the absence of the owners. So, in May 2020, three residents of Tashkent learned that their houses were being demolished by telephone from their neighbors.

Here is another example of the demolition and expropriation of housing during the pandemic. So, in July, in Bostanlyk rayon (district), Tashkent oblast (province), under the pretext of expanding the road, land was expropriated and the country houses of 24 owners were demolished. The reason for the expropriation of property was that allegedly the decisions issued by the mayor of the rayon do not correspond to reality, that is, these decisions were forged. Some owners have lived there since 1998. All this time they regularly paid taxes, including land and property taxes, and had no problems.

Here is another example of demolition and expropriation of residential premisess during a pandemic. So, in July, in the Bostanlyk district of the Tashkent region, under the pretext of expanding the road, land was withdrawn and the country houses of 24 owners were demolished. The reason for the expropriation of property was that, allegedly, the decisions issued by the mayor of the area do not correspond to reality, that is, these decisions are forged. Some owners have lived there since 1998. All this time they regularly paid taxes, including on land and property, and there were no problems.

In **Tajikistan**, as a result of no government decision available to protect households from eviction, the Independent Center for Human Rights Protection (ICHRP) documented[[57]](#footnote-58) the case of forced family eviction in June before restrictions were lifted (15.06.2020)[[58]](#footnote-59). The victim of the forced eviction, a woman, was taken to the police station. She was physically assaulted, which was subsequently recorded as part of the medical examination and documented. While she was at the police station, the house was partially demolished (roof, kitchen, bathroom), and her 3-year-old child was at home and received some injuries.[[59]](#footnote-60) ICHRP filed a complaint with the prosecutor’s office about illegal and dangerous demolition activities. The victim is currently being offered an alternative accommodation option, but none of these options are appropriate and commensurate with her half demolished house. All of this constitutes the violation of the right to adequate housing and other civil rights such as arbitrary arrest and detention, torture and violence.

Due to the limited communication measures of Covid-19, it is difficult to document other violations. It is believed that this case is not the only one that occurred during quarantine.

In **Kazakhstan**, the CA network members have not recorded any cases of housing expropriation, whereas in **Kyrgyzstan**, there have been 3 cases of expropriation of part of the land plot of residents due to the reconstruction of the river banks in Osh city, vulnerable population groups’ property turned out to be subject to demolition.

Thus, there is a great threat that initiatives to expropriate housing for public and state needs in the situation of the virus spread may still continue. However, the expropriation of a person's home during the pandemic, invasion of the owner's house in his or her absence is a flagrant violation of the requirements of the law. International standards do not recommend demolition and expropriation of housing, not to take advantage of the depressing position of the owners, in which they will not be able to fully protect and defend their rights. Expropriation of property during the virus spread causes enormous damage to human health and kills hope for justice. In the context of the coronavirus, people affected by the expropriation are limited in access to the services of human rights organizations and to appeal to the court.

The CA network members call on the Governments of the CA countries to refrain from implementing initiatives involving evictions and demolition of housing during the pandemic.

## Conclusions for Chapter IV:

*International recommendations clearly state that evictions should not lead to the emergence of homeless people or persons vulnerable to possible violations of other human rights. Governments should take all necessary measures, making the most of available resources, to ensure the availability and provision of adequate alternative housing as appropriate, resettlement opportunities or access to fertile land, especially for those unable to support their livelihoods. Alternative housing should be located as close as possible to the original place of residence and sources of livelihood of the evicted population. [[60]](#footnote-61)*

*International norms oblige countries to limit their actions on eviction and expropriation of housing. For example, UN Special Rapporteur Leilani Farha expresses concerns about expropriation of housing during the spread of Covid-19: “Evictions are not only incompatible with the “stay at home” policy, but forced evictions are a violation of international human rights law, including the right to housing, as well as any evictions that lead to homelessness. In the face of the pandemic, being evicted from one’s home is a potential death sentence.” [[61]](#footnote-62) The Special Rapporteur strongly suggests to all countries to: “Announce an end to all evictions of anyone, anywhere, for any reason, until the end of the pandemic and within a reasonable period thereafter. The only exceptions to this should be if someone needs to be evicted from their home because he or she poses danger for other people or the situation poses a serious threat to the lives of residents, such as preventing death from the collapse or natural disasters such as floods.”*

Summarizing the practice of exercising the rights of Central Asian citizens after the expropriation of housing, we can say the following:

1. International recommendations in all 4 CA countries are not properly implemented. However, in 2019-2020, the Governments of the CA countries began implementing activities to improve national standards regarding strengthening the rights of citizens to housing during its expropriation, which should have a positive effect on the lives of citizens in the future in the event of expropriation of housing.
2. Almost in all countries, the number of dissatisfied people is higher than satisfied ones. The governments of the countries do not provide support and do not accompany persons affected by the expropriation until they fully acquire housing equivalent to the expropriated one, literally they independently solve their problems. After the expropriation, many people experience losses associated with the arrangement of a new place, remoteness from those social facilities that a person is used to applying and receiving services. The laws of all CA countries do not provide for the pre-displacement eviction / social impact assessment. There are sections on compensation, however compensation cannot be fair and accurate if the compensation assessment includes only the market value of the property, but does not take into account other damage caused to a person due to unplanned displacement.
3. Poor practice of providing temporary housing. Thus, in almost all four CA countries there is no statistics on homelessness and poverty resulting from the expropriation of the only house for state / public needs.
4. Cases of appeal to law enforcement agencies against the actions of the authorities and the initiator of the expropriation for violation of contractual obligations have been reduced to zero. Forced payment of compensation and prosecution of local officials for arbitrariness are noted only in Uzbekistan.
5. The positive practice of networking between NGOs of Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan on joint response to severe cases of violation of citizens' rights during expropriation is noted. The CA Network platform “The Right to Adequate Housing” is becoming recognizable at the level of Governments, local and international agencies of CA countries.

# CONCLUSION

## Findings

Analysis and study of the legislation and practice of the Central Asian countries of Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan in the field of expropriation (buy-out) of housing for public and state needs shows that of all cases of expropriation, the cases of forced expropriation of housing are twice as large as compared with voluntary alienation. The dynamics of a sharp increase in the cases of expropriation of housing is noted in Uzbekistan and Tajikistan, in Kazakhstan and Kyrgyzstan the increase is not very noticeable.

All cases of violation of the rights of citizens and the inconsistency of the legislation and practice of the CA countries with the international norms described in the report BEFORE, DURING, AFTER EXPROPRIATION are characteristics of the existence of forced expropriation.

The norms of the Constitutions of the countries of Central Asia prohibit illegal deprivation of a person's home, as well as illegal intrusion into it. The legislation of almost all countries establishes that the expropriation of land (housing) is carried out only through the buy-out and with consent of the owner, and in exceptional cases only through the courts. The requirements of the Constitutions are not always implemented by the countries, conflicts between the owner and the initiator of expropriation mainly arise due to low compensation, which do not include the losses of citizens spent on restoring their right to housing. Cases when residents are satisfied after expropriation are rare.

Residents of Central Asia are not viewed by the authorities as a group of rightholders, whose rights are violated during the confiscation of housing. Decisions to change cities are made by governments without public participation, people are not informed that the possibility of their eviction is being considered and that the proposed plans will be brought up for discussion.

No country has a legal framework providing protection against forced evictions. In Kazakhstan, Tajikistan and Uzbekistan, evictions can take place at night, inclement weather or during holidays, etc. There were no such cases in Kyrgyzstan Practices.

Throughout the region, evicted persons are reported to be subject to direct aggression or other forms of violence, and are deprived of their property or assets in connection with the demolition of their home.

The Central Asian states do not monitor the lives of people after the eviction. There is no resolution of issues of dissatisfaction with the needs of the evicted persons after eviction, the consequences of eviction, additional costs caused by resettlement. Residents can be relocated to places where there is no social infrastructure, water and sanitation.

Analysis and processing of data from studies of countries conducted by members of the CA Network in 2019 in parallel in all four countries shows an interesting picture.

The authors tried to analyze the level of compliance of the legislation of the countries and the law enforcement practice of the CA countries with international recommendations and standards.

According to the above diagram, with a scale value of 5 - full compliance of legislation / practice with international standards, the values in the countries were distributed as follows:

Laws: Kyrgyzstan - 1,8

Tajikistan - 2,3

Kazakhstan - 2,5

Uzbekistan - 2,7.

Practices: Uzbekistan - 1,5

Tajikistan - 2,1

Kazakhstan - 2,5

Kyrgyzstan - 2,9

Experts from the Central Asia Right to Adequate Housing Network believe that the compliance of **Kazakhstan**'s national legislation and law enforcement practice partially meets international standards; compliance with human rights standards is best observed at the stage of the eviction process. Human rights organizations of the Republic of Kazakhstan, members of the CA network on RAH have good experience in lawmaking. In 2010, the UN Special Rapporteur on the Right to Adequate Housing, Raquel Rolnik, paid a visit to Kazakhstan, which also contributed to the improvement of the legislation and practice of the Republic of Kazakhstan to strengthen the rights of citizens to housing.

Legislation and law enforcement practice in **Kyrgyzstan** is most different in comparison with the rest of Central Asia. Thus, the compliance of national legislation with international standards is minimal, and the compliance of practice shows above the average level, better in comparison with other countries. This can be explained by the activity of human rights organizations, members of the CA network for RAH, at the stage of pre-trial proceedings and mediation, at the stage before eviction, when it is possible to increase compensation by two to three times from the originally proposed amount. The scale of compliance of the legislation of the Kyrgyz Republic with international standards may increase in the case of the adoption of the law/regulation “On the procedure for expropriation (buy-out) of housing for public needs”, which is currently being discussed and lobbied for adoption by the Government of the Kyrgyz Republic.

**Tajikistan** demonstrates practically one level of compliance of national legislation and practice with international requirements – compliance between the minimum and average degree. Guarantees of the inviolability of housing In the Constitution of the Republic of Tajikistan are enshrined better, compared to other countries, however the practice of implementing the rights of citizens leaves much to be desired. Due to the good experience of the CA network members in monitoring violations of rights, the scale of compliance with the practice has increased in comparison with previous years. The scale of compliance of the legislation of the Republic of Tajikistan with international standards may increase if the draft Housing Code of the Republic of Tajikistan is adopted, in which the norms of expropriation of housing for public needs are outlined in a separate chapter. At this time, the draft Code is being discussed and lobbied for its adoption in the Government of the Republic of Tajikistan.

The Republic of **Uzbekistan** is the most different, if the national legislation, according to experts, partially meets international standards and the scale of compliance is much higher compared to other countries, then law enforcement practice demonstrates compliance with international standards at a minimum level. Due to the voicing of authorities’ harsh treatment cases by the RAH Network representatives at various meetings with the authorities, it has possible to prevent some cases of forced expropriation.

In general, all Central Asian countries are at a level between the minimum and average compliance of national laws and practices of countries with international human rights standards, which proves the existence of forced expropriation in CA countries.

The members of the CA Network on RAH in their research indicate positive initiatives undertaken by Governments. If Uzbekistan took measures to implement them into national legislation, in terms of involving the population in the discussion process, expropriating housing only after full transfer of monetary compensation, etc., then in Kyrgyzstan the draft Regulation “On the procedure for expropriating housing for public needs” is only being discussed. Tajikistan is also moving forward the draft Housing Code, taking into account the measures limiting forced expropriation. In Kazakhstan, amendments have been proposed at the level of 4 laws of the RK.

By all means, all these initiatives bring countries one step closer to the requirements of international norms, but they do not yet constitute a complete list of human rights implementation.

## Recommendations

1. **To involve owners of housing and other property in the process of expropriation at all stages of the decision to expropriate property for public and state needs**. Owners actually learn about the expropriation of their property for public needs after the decision is already made by the authorized body. The legislation of the countries does not assign obligations to the authorized bodies to involve the owners in the discussion process, at an early stage of the discussion, give them more time to protect their rights and self-assess the expropriated property.

2. **Notify the owners, residents of the decision and the beginning of the procedure for expropriation of property for public use at least 6 months in advance**. Expropriation of property, especially housing in which people may have lived for years or decades, can be a serious psychological and financial shock. Citizens need time, including to protect their rights. Minimum notice periods need to be legislated. At the same time, it is important that these 6 months were not established until the moment of expropriation, but before the start of the expropriation procedure, during which it was possible to apply to the relevant authorities to protect their interests and rights.

3. **Provision of qualified legal assistance for the owners of the expropriated property**. As practice shows, citizens cannot afford qualified legal assistance. It is recommended to develop mechanisms and procedures in the policy for the removal of housing, according to which citizens will have the opportunity to receive qualified legal assistance.

4. **Compulsory prior commensurate compensation**. Mechanisms should be laid down in laws and regulations to ensure the principle of prior commensurate compensation prior to eviction and expropriation, up to and including the establishment of criminal liability for authorized persons, against gross violators of human rights upon expropriation. In connection with additional losses, it is possible to provide for the possibility of setting an additional coefficient to the amount of the market price.

5. **Providing an independent property appraisal**. The laws of the countries prescribe the provision of fair compensation, which excludes the possibility of applying a state property valuation. Since in some countries the state (Government) is the customer of the property appraisal, the customer receives the appraisal opinion, the homeowners are not provided with such an opinion and, of course, the right to appeal (in case of disagreement!) or to appoint an independent examination / appraisal is violated.

6. **Exclusion of the possibility of leaving the owner homeless as a result of the expropriation of property for public needs**. The expropriation of property for public use should not entail deprivation of housing. At the same time, this applies not only to homeowners, but also to persons living together with the owners, or temporarily residing in the withdrawn housing. The CA states should take all measures and introduce appropriate mechanisms for cases exclusively for public needs.

7. **The states of the studied CA countries shall legislate the norms after eviction**. Provide temporary housing between eviction and purchase of new housing. Move persons subject to expropriation to new places of residence after the creation of appropriate living conditions, with the provision of infrastructure, communication and access to social facilities.

8. **Prevention of facts of pressure on human rights defenders** providing assistance and protection to persons subjected to forced expropriation. In a number of countries, human rights defenders are being targeted for their work to protect people whose homes are to be expropriated and confiscated. Taking into account the fact that states do not provide citizens whose housing is confiscated with qualified legal assistance, the protection of human rights defenders from this perspective is one of the fundamental elements of the citizens' realization of the right to adequate housing.

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2. Committee on Economic, Social and Cultural Rights, general comment No. 7 (Sixteenth session, 1997) on the right to adequate housing: forced evictions. [↑](#footnote-ref-3)
3. The definition was given by the members of the CA Network “The Right to Adequate Housing”. [↑](#footnote-ref-4)
4. Definition provided in accordance with UN Resolution of 1946. [↑](#footnote-ref-5)
5. [https://www.un.org/development/desa/ru/news/social/%D0%B2-%D0%BA%D0%BE%D0%BC%D0%B8%D1%81%D1%81%D0%B8%D0%B8-%D0%BE%D0%BE%D0%BD-%D0%BF%D1%80%D0%B8%D0%BD%D1%8F%D0%BB%D0%B8-%D0%BF%D0%B5%D1%80%D0%B2%D1%83%D1%8E-%D0%B2-%D0%B8%D1%81%D1%82%D0%BE%D1%80%D0%B8.html](https://www.un.org/development/desa/ru/news/social/в-комиссии-оон-приняли-первую-в-истори.html) [↑](#footnote-ref-6)
6. Constitution of the Republic of Kazakhstan URL: <https://www.akorda.kz/ru/official_documents/constitution> [↑](#footnote-ref-7)
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10. Resolution of the Constitutional Council of the Republic of Kazakhstan dated June 16, 2000 No. 6/2 “On the official interpretation of Paragraph 3 of Article 26 of the Constitution of the Republic of Kazakhstan.” URL: <http://adilet.zan.kz/rus/docs/S000000006_> [↑](#footnote-ref-11)
11. # Resolution of the Constitutional Council of the Republic of Kazakhstan dated December 20, 2000 No. 21/2 “On the official interpretation of Paragraph 3 of Article 26 and Paragraph 2 of Article 76 of the Constitution of the Republic of Kazakhstan.” URL: [http://adilet.zan.kz/rus/docs/S000000021](http://adilet.zan.kz/rus/docs/S000000021_)

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12. URL: <http://cbd.minjust.gov.kg/act/view/ru-ru/202913> [↑](#footnote-ref-13)
13. URL: <https://adliya.tj/ru/constitution> [↑](#footnote-ref-14)
14. Constitution of the Republic of Uzbekistan. URL: <https://lex.uz/acts/35869> [↑](#footnote-ref-15)
15. Criminal Procedure Code of the Republic of Uzbekistan URL: [https://lex.uz/acts/111463#186066](https://lex.uz/acts/111463" \l "186066) [↑](#footnote-ref-16)
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18. p. 37. Basic principles and guidelines on identification and displacement for development reasons. - А/HRC/4/18 [↑](#footnote-ref-19)
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20. Land Code of the RT https://www.medt.tj/documents/main/normativno-pravovie-akti/zakonodatelnie-akti/ru/02509-ru.pdf [↑](#footnote-ref-21)
21. Study on Land Acquisition in Tajikistan [↑](#footnote-ref-22)
22. Same as above [↑](#footnote-ref-23)
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27. The Land Code of the Republic of Kazakhstan No. 442 with additions and amendments dated 11.04.2019

    [↑](#footnote-ref-28)
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30. Art12. p. 2. Constitution of the Kyrgyz Republic, 2010 [↑](#footnote-ref-31)
31. Analytical note in the field of confiscation of housing for state public needs in the Kyrgyz Republic, based on the study of the Osh branch of the NGO “MC Interbilim” [↑](#footnote-ref-32)
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40. See UN Habitat Fact Sheet <https://www.ohchr.org/Documents/Publications/FS25.Rev.1_ru.pdf> [↑](#footnote-ref-41)
41. See UN General Assembly Resolution.URL <https://undocs.org/pdf?symbol=ru/A/RES/60/147> [↑](#footnote-ref-42)
42. Video material “Your house was demolished.” URL: <https://www.youtube.com/watch?v=J28hsDKfddw&t=21s> [↑](#footnote-ref-43)
43. See the Civil Code of the Republic of Uzbekistan, Part 1. URL: <https://www.medt.tj/documents/main/normativno-pravovie-akti/zakonodatelnie-akti/ru/02505-ru.pdf> [↑](#footnote-ref-44)
44. See clause 1.8. Instruction on the procedure for legal registration of buildings, structures and other objects in cities, regional centers, settlements and villages of the Republic of Tajikistan. URL: [https://online.zakon.kz/Document/?doc\_id=30559827#pos=15;-60](https://online.zakon.kz/Document/?doc_id=30559827" \l "pos=15;-60) [↑](#footnote-ref-45)
45. URL of the Order of the President of the Republic of Uzbekistan: <https://lex.uz/ru/docs/4460115> [↑](#footnote-ref-46)
46. The practice of involving community members and representatives of NGOs in the Kyrgyz Republic in the commission, in order to agree and discuss the amount of compensation, terms of the contract, and the eviction process. URL: <https://righttohousing.net/stories-of-people/> [↑](#footnote-ref-47)
47. Public group in Facebook "Tashkent - DEMOLITION." («*Ташкент – СНОС*»). URL <https://www.facebook.com/groups/328799110874813> [↑](#footnote-ref-48)
48. Information on alternative reports is provided in Chapter IV [↑](#footnote-ref-49)
49. See clause 10. Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan dated December 25, 2006 No. 8 “On some issues of application of the seizure of land laws by the courts for public needs” [↑](#footnote-ref-50)
50. See Article 12 of Constitution of the Kyrgyz Republic. URL: <http://cbd.minjust.gov.kg/act/view/ru-ru/202913> [↑](#footnote-ref-51)
51. <http://act.sot.kg/posts/post57763b468dcdf.pdf> [↑](#footnote-ref-52)
52. Resolution of the Cabinet of Ministers of the Republic of Uzbekistan “On additional measures to improve the procedure for providing compensation for the expropriation and provision of land plots and ensuring the guarantee of property rights of individuals and legal entities” URL: <https://lex.uz/docs/4597630?fbclid=IwAR37rOnvrtHHJUdF_M-fqmVK-srV8wNICO5HAIJ8Z4xlnmjj0sSTSC5iRUY> [↑](#footnote-ref-53)
53. [https://righttohousing.net](https://righttohousing.net/) [↑](#footnote-ref-54)
54. <http://ichrptj.org/sites/default/files/rezultaty_deyatelnosti_seti_ca_po_pravu_na_dostatochnoe_zhilishche_za_2018-2019gg.pdf> [↑](#footnote-ref-55)
55. The Appendices of this report contain a table of detailed recommendations of other UN treaty bodies for the 4 CA countries. [↑](#footnote-ref-56)
56. [https://upl.uz/policy/15288-news.html](https://upl.uz/policy/15288-news.html )  [↑](#footnote-ref-57)
57. <https://www.asiaplustj.info/ru/news/tajikistan/incidents/20200612/v-dushanbe-vlasti-nachali-snosit-dom-s-nahodyatshimisya-v-nem-detmi-odin-rebenok-poluchil-travmu> [↑](#footnote-ref-58)
58. <https://www.reuters.com/article/us-health-coronavirus-tajikistan-idUSKBN23M0WC> [↑](#footnote-ref-59)
59. <http://www.ichrptj.org/ru/blog/tursunzoda-76-vlasti-demontiruyut-dom-s-nahodyashchimisya-v-nem-detmi> [↑](#footnote-ref-60)
60. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/106/30/PDF/G0710630.pdf?OpenElement> [↑](#footnote-ref-61)
61. <https://www.ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_guidance_evictions.pdf> [↑](#footnote-ref-62)