

# COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

## ISHR'S SUMMARIES OF DOCUMENTS FOR THE 5<sup>TH</sup> SESSION OF THE COUNCIL

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living<sup>1</sup>

### Mandate holder

Miloon Kothari

### Mandate

The mandate was established in 2000<sup>2</sup>, to highlight the place the right to adequate housing had within the framework of the realization of economic, social, and cultural rights. The framework for the right extends from Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights* and general comments No. 4 and No. 7 of the Committee on Economic, Social and Cultural Rights. It is considered to be of central importance for the enjoyment of all economic, social and cultural rights and should be seen as the right to live somewhere in security, peace and dignity. It relates to issues such as the legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.

### Annual Report<sup>3</sup>

#### Scope:

The report covers the Special Rapporteur's activities in 2006, especially regarding legal framework, such as identifying the normative gap in international human rights law on the human right to land. It also uses a gender perspective to examine the activities of the global study on women and adequate housing to the end of achieving a set of guidelines.

#### Activities:

- Annual report.
- Followed up on the global study on women and adequate housing through the International Workshop on Forced Evictions in Berlin in June 2005 in coordination with German Federal Foreign Office and the German Institute for Human Rights, resulting in the basic principles and guidelines on development-based evictions and displacement.

<sup>1</sup> Summary prepared by Alison Leon, Intern, ISHR, supervised and edited by Gareth Sweeney, Information Program, ISHR.

<sup>2</sup> Commission on Human Rights Resolution 2000/9.

<sup>3</sup> A/HRC/4/18, 5 February 2007, available at <http://www.ohchr.org/english/bodies/hrcouncil/docs/4session/>.

- Mission to Australia.

### **Summary and key conclusions:**

- **Indicators on the right to adequate housing:** The Special Rapporteur affirmed that the need for the elaboration of an operational framework for the realization of the right to adequate housing, including indicators and methods of monitoring, has become more pertinent with the emergence of the Millennium Development Goals (MDGs). He has built on the work of civil society to endorse a list of indicators for monitoring the right to adequate housing. He draws attention to the specific need for disaggregated data so that vulnerable groups could be monitored. The Special Rapporteur has defined three types of indicators, which together comprise all aspects of the realization of the right from duty holders' obligations to right holders' rights. These include **structural indicators**, or institutional mechanisms; **process indicators**, or accountability measures; and **outcome indicators**, which are directly related to the corresponding right and help focus on the end when the means might be more complex.
- **Monitoring women's rights to adequate housing and land:** The Special Rapporteur was mandated by Commission on Human Rights *Resolution 2002/49* to conduct a global study on women and adequate housing. He has strengthened the focus on women's rights through the development of specific strategies for collecting information on women's right to housing, more specifically through a questionnaire and consultations with grass-roots groups. The questionnaire collects women's experiences and information on the legal and policy framework for realizing the right.
- **Basic principles and guidelines on development-based evictions and displacement:** The Special Rapporteur described the complex problems that forced evictions entail, such as the lack of means to earn a livelihood; physical and psychological injuries to those affected – especially vulnerable groups such as women; and often the absence of an effective remedy. He undertook a study on forced evictions and their effects, resulting in a set of basic principles and guidelines. They define, *inter alia*, the practice of forced evictions; steps States may take to protect human rights regarding evictions; a right to resettle; and a strong gender perspective.
- **Normative gaps - the human right to land:** The Special Rapporteur reiterated his position that the right to land is a critical element of the human right to adequate housing. He noted that the question of land has particular effects on groups such as indigenous peoples, minorities and refugees. The Special Rapporteur strongly believes that the Human Rights Council should consider devoting attention to the question of the human right to land and should conduct studies in this regard that build on the work of organized peasant and indigenous peoples' organisations.

### **Key recommendations:**

- The Special Rapporteur asks that the current report be read alongside the two previous reports, E/CN.4/2006/41, which highlighted strongly the need for a right to land, and E/CN.4/2006/118, which pleads, *inter alia*, for the institutionalisation of a women's right to housing and land.
- The Special Rapporteur urges Governments to test and adapt the structural, process, and outcome indicators presented.
- He requests that his recommendations under E/CN.4/2006/118, specifically the institutionalised right of women to housing, be revisited by the Council and relevant special procedures.
- The Special Rapporteur requests also the wide dissemination of the basic principles and guidelines on development-based evictions and displacement, and their inclusion into relevant special procedures.
- The Special Rapporteur urges States to incorporate these guidelines into their resettlement policies.
- He requests that the right to land as a human right be recognized and strengthened.
- The Special Rapporteur urges States to prioritise agrarian reform including land redistribution.
- The Special Rapporteur requests the consideration of holding an expert seminar to develop strategies for legal recognition of land as a human right.
- He also requests that consideration of the mandate of the Special Rapporteur, when under review, should recognize adequate housing as a distinct human right.

## Annex 1

### Basic principles and guidelines on development-based evictions and displacement

#### **Scope and nature:**

The present guidelines address the human rights implications of development-linked evictions and related displacements in urban and rural areas. They apply to acts and emissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability to reside or work in a particular place. They aim at providing a practical tool to assist States and agencies in developing policies, legislation, procedures, and preventative measures to ensure that forced evictions do not take place, and to provide effective remedies to those whose human rights have been violated should prevention fail.

#### **General obligations:**

- **Duty bearers:** States bear the principal obligation for applying human rights and humanitarian norms. This does not, however, absolve other parties, including project managers and personnel, international financial and other institutions or organizations, transnational and other corporations, and individual parties, of responsibility.
- **Basic human rights principles:** According to international human rights law, everyone has the right to adequate housing as a component of the right to an adequate standard of living. The right to adequate housing includes, *inter alia*, the right to protection against arbitrary or unlawful interference with privacy, family, home, and to legal security of tenure. According to international law, States must ensure protection against forced evictions, and the human right to adequate housing and secure tenure. All these protections must be guaranteed without discrimination of any kind.
- **Implementation of State obligations:** States shall ensure that evictions only occur in exceptional circumstances. Evictions require full justification given their adverse impact on a wide range of internationally recognized human rights. States must adopt legislative and policy measures prohibiting the execution of evictions that are not in conformity with obligations and should take steps to ensure the equal enjoyment of the right to adequate housing by all. To ensure an absence of discrimination, States should frequently review their policies.

#### **The guideline's recommendations regarding forced evictions:**

- **Prior to evictions:** Planning processes should include all those likely to be affected. States should explore fully all possible alternatives to evictions. Evictions should be announced in advance, and should not result in individuals being rendered homeless or vulnerable to violations of other human rights.
- **During evictions:** Government officials or their representatives should be on site during evictions. Neutral observers should be allowed access upon request to ensure transparency and compliance with international human rights principles. Evictions should be carried out in a manner that accords dignity.
- **After evictions – immediate relief and relocation:** The Government and any other parties responsible for providing just compensation and sufficient alternative accommodation must do so immediately and without discrimination. Evicted persons who are wounded and sick, as well as those with disabilities, should receive the medical care and attention they require to the fullest extent practicable and with the least possible delay. Identified relocation sites must fulfil the criteria for adequate housing according to international human rights law. They include: services for attaining water and access to facilities and infrastructure for cooking and waste management; adequate space and protection from cold, heat, and rain; and access to employment options, schools, and health-care facilities.
- **Remedies for forced evictions:** When eviction is unavoidable, compensation should be provided, whether or not the evicted persons hold title to their property. Women and men must be co-beneficiaries of all compensation packages. When circumstances permit, States should allow for restitution and return.

## Mission to Australia<sup>4</sup>

### Scope:

The mission took place from 31 July to 15 August 2006. The Special Rapporteur met with the Commonwealth authorities in Canberra, as well as other government and civil society officials. He visited major cities as well as indigenous villages and an immigration detention centre near Sydney.

### Summary and key conclusions:

- **Characteristics of housing.** Australians have traditionally favoured homeownership, and this preference is supported by tax incentives and other means. Indigenous communities, however, tend to live in rented accommodation. Currently the State is experiencing ‘housing stress’ where many Australians are living in housing they cannot afford. This is compounded by a decline in the availability of low-cost rental housing in both public and private sectors.
- **Issues of particular concern.** These include **homelessness**, specifically laws that criminalize ‘essentially human activities’ such as falling asleep in a public place between sunset and sunrise; a **national housing crisis**, where the public stock of housing is aging but not being replaced or properly maintained; **affordability**, where a large percentage of income is spent on housing; **homeownership**, where sections of the population who cannot purchase homes are facing serious discrimination; **evictions**, where no law exists setting forced evictions in accordance with international human rights standards; and **rural areas**, where the cost of living is high and access to public services problematic.
- **Specific groups with vulnerabilities regarding adequate housing.** The Special Rapporteur noted several groups of people deserving specific attention:
  - **Indigenous communities** seemed to have adverse housing conditions, including too many residents, unaddressed health problems, European-style houses that do not accommodate other cultural living practices, and problems related to an absence of the right to land.
  - **Women** often face *de facto* discrimination in the areas of housing, land, and inheritance right, and the Special Rapporteur notes with concern specific problems relating to: discrimination in the public housing system towards indigenous women through rigorous enforcement of a requirement for referees, which is not exercised for non-indigenous women; lack of security in houses where women are placed; discrimination against women receiving welfare benefits; and age and racial differences having a negative impact on the success of private rental applications, despite their illegality.
  - **Children and youth** sometimes lack adequate refuge, especially victims of domestic abuse, and this contributes to physical and mental health concerns. Additionally, women who live in inadequate housing fear losing their children.
  - **People with disabilities and health problems** have difficulties starting or maintaining employment that allows them to afford the high costs of housing.
  - **Refugees and asylum seekers** experience problems of access and are often forced into poor living conditions and homelessness.
  - **Prisoners** after release face difficulties in finding housing, but the bigger problem is that homeless people are disproportionately represented in the criminal justice system and the rate of recidivism amongst homeless offenders is high.

### Key recommendations:

- Australia should adopt a comprehensive and coordinated national housing policy, and develop a clear, consistent, long-term and holistic **housing strategy** that addresses structural problems.
- All **interested parties should be genuinely consulted** in designing policies, strategies, and planning in housing.
- Federal and State authorities should make bigger efforts to explicitly incorporate the wide range of international human rights instruments to which Australia is a party into the **domestic legal system**.

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<sup>4</sup> A/HRC/4/18/Add.2, 11 May 2007.

- The Special Rapporteur recommends that state/territory governments **review residential tenancy laws** in order to ensure compliance with international human rights standards, particularly with respect to guaranteeing minimum acceptable accommodation standards, and the prohibition on forced evictions.
- The Special Rapporteur encourages the Government to develop and revitalise, in full cooperation with local communities, **rural and remote areas** with a view to diminishing the migration from rural to urban areas and easing the housing problems in cities.
- The Australian Government needs to seriously **reflect upon the current homeownership model** and its possible negative impact on housing affordability and housing availability.
- The Special Rapporteur recommends that the Government **ratify and implement the Optional Protocol to CEDAW** in order to strengthen the protection of women's rights to adequate housing.
- The Special Rapporteur hopes that the Australian authorities will fully implement the recommendations on housing and land made to them by the various human rights bodies.

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