



International Service for Human Rights

The Reports in Short

ISHR's summaries of documents for the UN Commission on Human Rights
62nd Session and Human Rights Council 2nd Session

The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living¹

Mandate Holder

Miloon Kothari.

Mandate

The mandate was established in 2000² in recognition of the need for ongoing new approaches to the realisation of economic, social and cultural rights. The right to adequate housing is a component of the right to an adequate standard of living under Article 11(1) of the *ICESCR*. 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.

Activities

- Annual report;
- Report on women and adequate housing;
- Communications with Governments and other actors;
- Mission to Iran;
- Mission to Cambodia.

Annual report³

Scope

The report comprehensively reviews the Special Rapporteur's main activities since his appointment and attempts to follow up on and draw conclusions there from, highlighting progress made, issues of particular concern and areas where particular attention should be paid by Governments, UN and other international bodies. Guidelines on forced evictions are contained in an appendix.

Summary and key conclusions

- Over the years, the Special Rapporteur has focused on discrimination and segregation in housing and public services and the impact of globalisation on housing rights⁴; water and sanitation and indicators in the context of the Millennium Development Goals⁵; forced evictions⁶; and homelessness⁷;

¹ Summaries prepared by Cléa Thouin, Intern, ISHR, supervised and edited by Meghna Abraham, Information Program, ISHR.

² Commission on Human Rights *Resolution 2000/9*.

³ E/CN.4/2006/41, 14 March 2006.

⁴ E/CN.4/2002/59, 1 March 2002.

⁵ E/CN.4/2003/5, 3 March 2003.

⁶ E/CN.4/2004/48, 2 November 2004.

⁷ E/CN.4/2005/48, 3 March 2005.

- The Special Rapporteur has aimed to take a **constructive approach** to his mandate, which would provide **practical** and **concrete solutions** and has focused primarily on identifying where innovation and strategic cooperation have led to, or could lead to, the realisation of adequate housing;
- The Special Rapporteur uses an approach stressing the **indivisibility of human rights**. This approach initially meant focusing on the interface between adequate housing as an economic, social and cultural right, and relevant civil and political rights, but the work of the Special Representative has demonstrated repeatedly that the existing inter-linkages extend far beyond this. An in-depth analysis would explore inter-linkages with rights such as the right to land, food, water, health, equality, security of the person, and protection against inhuman and degrading treatment;
- The **definition** of the right to adequate housing adopted by the Special Rapporteur is “the right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity”⁸;
- During his term, the Special Rapporteur has carried out country missions to Afghanistan, Brazil, Cambodia, the Islamic Republic of Iran, Kenya, Mexico, the Occupied Palestinian Territories, Peru and Romania;
- The Special Rapporteur has continued to engage in active dialogue with both States and civil society, and the majority of cases he has taken up have concerned forced evictions;
- The Special Rapporteur has also devoted significant time and resources to strengthening cooperation with relevant treaty bodies, other special procedures mandate-holders, the UN Human Settlements Programme and other UN entities with a view to integrating rights relevant to his mandate into their programs.

The Special Rapporteur has highlighted a number of obstacles to the realisation of adequate housing:

- The right to housing cannot be separated from the **land** and **property considerations**, which raise a number of concerns including land and property speculation, the unwillingness of States to intervene in the market to ensure that low-income persons can access private housing, land confiscation and land mafia;
- There is a need to integrate human rights standards into relief and rehabilitation efforts in the aftermath of **natural disasters** and **humanitarian emergencies** as these are issued around discrimination and corruption in distribution of aid and overcrowding, lack of water and sanitation and violations of the human rights to adequate housing in temporary and intermediate shelters;
- There are problems both with **urban areas**, where there are increasing numbers of people living in slums, and a rise of ‘urban apartheid’ and ‘ghettoisation’ with physical borders of separation between wealthy and poor urban residents, and in **rural areas** where there is inadequate housing and homelessness;
- There is a worldwide failure to finance and ensure **adequate housing for the poor**;
- The Special Rapporteur has undertaken considerable work on **women and adequate housing**, identifying a “culture of silence” as one of the main obstacles of women’s housing rights.

Key recommendations

The Commission should:

- Continue the mandate on adequate housing;
- Consider wider distribution and eventual adoption of the **guidelines on forced evictions**;
- Recognise the **right to land** as a human right and protect it under international human rights law;
- Request States to give priority to **agrarian reform** in rural areas and to **land** and **wealth redistribution** in both urban and rural areas. States should also enact legislation to act against and prevent forced evictions, urban apartheid and segregation, growth of the “land mafia” and land cartels, unbridled property speculation, and indiscriminate escalation of housing and property prices;
- Request States and other actors involved in **post-disaster relief** and rehabilitation to uphold international human rights standards.

⁸ P.5.

Scope

The appendix contains guidelines on development-based evictions and displacement, developed following an International Workshop on forced Evictions in June 2005.

Summary and key conclusions

- The obligation of States to refrain from, and protect against, forced evictions arises from several international legal instruments, such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights;
- Development-based evictions include evictions planned under the pretext of serving the **public good**, such as those linked to development and infrastructure projects; urban renewal; housing renovation; unbridled land speculation; major international business or sports events; and environmental purposes;
- **States bear the principal obligation** for applying human rights and humanitarian norms;
- States must ensure that protection against forced evictions is guaranteed without **discrimination** of any kind and that evictions ensure the equal rights of men and women at all stages of the process;
- States should ensure that evictions occur only in **exceptional circumstances** and are authorised by law; carried out in accordance with international human rights law and the present guidelines; undertaken solely for the purpose of promoting the general welfare; are reasonable and proportional; and regulated so as to ensure full and fair compensation and rehabilitation;
- States should develop specific **preventive measures** to avoid underlying causes of forced eviction, notably by reviewing the operation and regulation of the housing and tenancy market and intervening to ensure that market forces do not increase the vulnerability of low-income and marginalised groups to forced evictions;
- States should also carry out **eviction-impact assessments**, taking into account vulnerable groups;
- Development-based evictions should include appropriate notice to all potentially affected persons; effective dissemination of relevant information in advance; reasonable time period for public review of the proposed plan; efforts to facilitate the provision of legal, technical and other advice to affected persons about their rights and options; and the holding of public hearings to provide opportunities for review;
- The **procedural requirements** of evictions include the mandatory presence of government officials or their representatives on site during evictions; the possibility of neutral observers being present; and the respect for dignity and human rights to life and security;
- The Government and any other concerned parties are responsible for providing prompt and just **compensation** and **sufficient alternative accommodation**. At a minimum, evicted persons should have safe access to essential food, potable water and sanitation; basic shelter and housing; appropriate clothing; essential medical services; livelihood sources; fodder for livestock; and education for children;
- All persons threatened with or subject to forced evictions have the right of access to **timely remedy**, including a fair hearing, return, restitution, resettlement, rehabilitation and compensation;
- States should actively **monitor** and carry out **evaluations** to determine the number, type and long-term consequences of evictions and should entrust an independent national body to monitor and investigate forced evictions and State compliance with these guidelines and international human rights law;
- The **international community** should take fully into account the prohibition on forced evictions: international organisations should establish and accede to **complaint mechanisms** for cases of forced evictions and **trans-national** and **other business enterprises** must respect the human right to adequate housing.

Report on women and adequate housing¹⁰

Scope

The report presents the main findings from the thematic research, country missions, and regional civil society consultations carried out by the Special Rapporteur and information received from Governments and other actors on the status and implementation of women's right to adequate housing from 2002 to 2006.

⁹ E/CN.4/2006/41, pp.14-26

¹⁰ E/CN.4/2006/118, 27 February 2006.

Summary and key conclusions

There is a gap between legal and policy recognition of women's right to adequate housing, land and inheritance¹¹ and implementation by States. This gap is supported by a culture of silence regarding the prevalence of violations of these rights.

The Special Rapporteur's main activities to promote the implementation of the existing legal framework have included:

- An **indivisibility approach** that explores linkages with other rights such as the right to food, health, work, and security of the person, reflecting testimonies received from regional consultations;
- **Clarification of normative content of existing rights:** the right to adequate housing has been defined as the right of everyone "to gain and sustain a secure home and community in which to live in peace and dignity"¹²; identification of nine criteria of adequate housing, in addition to the ones identified by the Committee on Economic, Social and Cultural Rights (CESCR)¹³, including access to natural resources, participation, security, access to remedies, and freedom from violence against women¹⁴; contribution to the elaboration of CESCR's General Comment No. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights;
- Development of **sets of implementation guidelines:** contribution to discussions on the development of the Optional Protocol to the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*; development of model questions for discrimination in the housing sphere to be used by the Committee on the Elimination of Discrimination against Women (CEDAW); drafting of model provisions to protect women's right in domestic violence legislation in cooperation with the Special Rapporteur on violence against women;
- Reporting on the **positive strategies adopted by States and civil society groups:** highlighting the increasing recognition of the right to adequate housing and women's rights in national legislation and policies, as in the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*; developments in religious law, notably in Tunisia, Malaysia, Singapore and Pakistan; increased engagement by women's groups with women's housing issues, reflected in the NGO International Consultation on Women Human Rights Defenders and the Social Forums.

The Special Rapporteur has highlighted a number of obstacles against the realisation of the right to adequate housing of women:

- **Different groups of women** can be particularly vulnerable to discrimination, including victims of domestic violence, divorced or separated women, female-headed households, women in conflict and post-conflict situations, women from minorities, sex workers, and lesbian women;
- **Violence against women**, including domestic violence but also armed or ethnic conflict, forced evictions and persistent poverty: Regional consultations have highlighted the global prevalence of domestic violence and its impact on women's adequate housing;
- **Discriminatory cultural and social norms:** the prevalence of certain cultural norms and traditions that deprive women of their rights to land, inheritance and property, which in turn prevents them from accessing their right to adequate housing, especially when these norms are reflected in family or **personal laws**. Based on his missions to Iran and Afghanistan, the Special Rapporteur highlighted his concern that in some Muslim countries and communities, issues such as divorce, polygyny and inheritance are covered under discriminatory laws and traditional interpretations of Muslim laws generally give Muslim female heirs a lesser share than male heirs. Customary practices relevant to women's family or personal status can also lead to women being coerced into surrendering their property rights. Few women have the social and economic resources required to pursue claims for their rights against male relatives and therefore face the "choice" between secure shelter and claiming their rights to inheritance;
- **Multiple discrimination:** the Pacific regional consultation drew attention to the situation of indigenous women with disabilities; the Central Asia and Eastern Europe consultation focused on women from minorities, in particular Roma women, while the North American consultation pointed out the issue of income-based discrimination. The Special Rapporteur drew attention to the specific situation of single women, often discriminated against on the basis of their status, even in State housing programs;
- The **privatisation of land and public services** has often led to land and public services becoming less affordable, which particularly affects women-headed households especially in the light of a world-wide feminisation of poverty;

¹¹ The scope of women's right to adequate housing is described in E/CN.4/2003/55, 26 March 2003.

¹² E/CN.4/2001/51, 25 January 2001, para 8.

¹³ In General Comment No.4.

¹⁴ Para.11, p.6.

- **Natural disasters and man-made disasters** put women at greater risk of violence; impoverishment and homelessness; and they often benefit less from reconstruction efforts. After the Indian Ocean tsunami and the earthquake in South Asia in October 2005, women were marginalised in the reconstruction process and had to live in substandard conditions, with their claims to land often not being upheld. Regional consultation in Central Asia and Eastern Europe also drew attention to the problem of women living on land affected by toxic waste, particularly in Belarus and Kosovo;
- Women are adversely affected by **forced evictions** and can suffer loss of home, livelihoods, support systems, and physical and psychological trauma. CESCR, in General Comment No. 7, stated that women are particularly vulnerable to forced evictions given the statutory and other forms of discrimination they experience in relation to property rights;
- Women represent 50 per cent of all adults living with **HIV/AIDS**. The disease affects women's housing rights particularly with regard to housing security and forced evictions;
- The North American regional consultation identified the issue of **homelessness** as critical for indigenous women and young women, particularly in Canada, as it exposes women to a range of physical and emotional dangers, including forced prostitution, drug abuse and health risks. Studies identify sexual abuse within the family as one major contributing reason to homelessness among girls.

Key recommendations

There is a continued need for States to strengthen national legal and policy frameworks for protecting women's rights to adequate housing and provide avenues for redress for violations. In particular they should:

- **Ensure constitutional recognition of the right to adequate housing, non-discrimination and gender equality**, and harmonisation between provisions in international human rights instruments and religious and customary law and practice;
- Adopt **gender-sensitive housing policies and legislations**, taking into account the situations of specific groups of women who are particularly at risk of being victims of housing rights violations;
- Act with due diligence to prevent, investigate and punish **acts of violence against women**;
- Introduce **anti-violence provisions in housing legislation and provisions to protect women's right to adequate housing in domestic violence laws**;
- Ensure **human rights education** and training for law enforcers, State officials, judges, and NGO and media representatives.
- The Commission should urge States to **ratify the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*** and continue to support the elaboration of a draft optional protocol to the *International Covenant on Economic, Social and Cultural Rights*.
- **Treaty bodies and special procedures** should promote and protect women's rights within their mandates through greater attention to multiple discrimination and substantive equality approaches to laws and policies affecting women's human rights.
- States should adopt a **gender-equality approach** in implementing the **Millennium Development Goals**, poverty-reduction strategies, rural development and land reform programs, particularly in their operational initiatives and indicators, and NGOs should make more use of the Goals.
- In post-disaster situations, States, donors and NGOs should **ensure that women are able to participate and benefit equally from reconstruction efforts**.
- The Commission should authorise the holding of an **expert seminar to discuss current uses of customary laws and practices and their reconciliation with human rights principles**.
- The OHCHR should disseminate the reports from regional consultations on women and housing held since 2002 in a more extensive publication.
- The Commission should strengthen the **indivisibility approach** in the mandate for the Special Rapporteur.

Mission to the Islamic Republic of Iran¹⁵

Scope

The report covers a mission to the Islamic Republic of Iran from 19 to 31 July 2005. The Special Rapporteur met with members of the Government, including the Minister of Housing and Urban Development, senior officials, national institutions and organisations, members of the judiciary, and the Iranian Human Rights Commission; local authorities; civic and community organisations; members of the diplomatic community and various UN agencies and visited several areas, including Bam.

¹⁵ E/CN.4/2006/41/Add.2, 21 March 2006.

Summary and key conclusions

- Current housing policies focus mainly on State participation in the construction sector, with finance directed by the Central Bank through credit allocation and subsidies. There are a considerable number of governmental bodies carrying out work to improve housing conditions in the country; and the Government has made efforts to ensure access to water, electricity and sanitation across Iran, developed a focus on vulnerable and marginalized groups in its policies; and adopted preventive measures in disaster-prone areas.
- **Failures** can be explained by the inaccessibility of government credit facilities and leasing programs to the very poor; diversion of government incentives to large-scale builders for the production of low-price housing units towards expensive housing; urban bias in the planning of housing programs; and the lack of coordination between different government branches, agencies and organisations.
- **Security of tenure:** problems include that many families, especially in rural areas, do not have formal ownership titles over their houses and land; a growth of the informal housing sector and an expansion of illegal settlements, where inhabitants live under the constant threat of being evicted; forced evictions are carried out in informal neighbourhoods for upgrading projects with no alternative accommodation or compensation being offered; much more land is being acquired by public agencies through land expropriation policies than the amount released to the intended beneficiaries.
- **Provision of basic services** seems to be generally reasonable, although exceptions seem to disproportionately affect rural and urban poor neighbourhoods, and informal and minority neighbourhoods.
- **Affordability** appears to be the main obstacle to access to adequate housing and the rate of home ownership for low-income groups is much lower than the rest of the population. Government plans do not address this problem and current welfare programs do not provide sufficient levels of financial assistance to address difficulties in accessing adequate housing.
- **Accessibility:** most of Iran is located in an earthquake-prone area and the Government should be commended for its efforts to establish appropriate disaster prevention and relief measures. There are some problems however, with reports of inefficient national bureaucracy and corruption in relation to relief efforts in the context of the Bam earthquake. More than 18 months after the earthquake, survivors are still living in container units in camps, where overall living conditions are disturbing. With respect to the overall population, the main Government policy has been to provide long-term loans to those who can present ownership titles and assume down payments, thereby discriminating against low-income families.
- Iran's population is multi-ethnic and multi-religious and there is a problem with the **continued discrimination faced by ethnic and religious minorities and nomadic groups**, reflected in the disproportionately poor housing and living conditions of these groups. Minority groups are also disproportionately affected by displacement caused by development projects and land confiscation.
- The impact of discriminatory laws and practices on the housing situation of religious minorities in Iran is especially evident in the legal provisions concerning inheritance rights, which favour one heir over others if one of the heirs has converted to Islam.
- Nomadic groups face difficulties associated with new limitations imposed on their traditional practices, such as the reduction of routes that they are allowed to use and increasing private appropriation of routes and sites that were traditionally used by nomads and limitations on livestock.
- **Women** face serious obstacles with respect to their right to adequate housing, such as the requirement of authorisation of male relatives to purchase housing; limited access to the labour market; and legal provisions restricting women's inheritance rights.

Key recommendations

The Government should:

- Fully implement the constitutional provision that establishes the right to adequate housing for all Iranians.
- Review the functioning of **State acquisition of land**, halt all **forced evictions** carried out in violation of international human rights law and conduct in-depth investigations of property confiscation cases as well as development-led displacement.
- **Harmonise the work of different governmental and government-related organisations** carrying out housing programs, and set up monitoring and accountability mechanisms in this respect.
- Consider **intervening in the housing and land market** to address the increase in rental and ownership costs.
- Develop specific policies to expand **access to basic amenities** to distant and minority predominant regions and poor neighbourhoods.
- Reinforce, expand and implement housing policies aimed at **groups in vulnerable situations, ethnic and religious minorities, and women**.

- Increase attention to the situation of the people affected by the **earthquake in Bam**.
- The **international community** should provide technical cooperation to facilitate an increase in the construction of earthquake-proof houses and should increase funding to housing projects.

Summary of communications sent and replies received from Governments and other actors¹⁶

Scope

Summaries of communications, government replies, observations and follow-up for the period 16 December 2004 to 1 December 2005.

Summary and key conclusions

- The majority of communications deal with cases of allegations concerning **forced evictions**;
- The majority of Governments have not responded, or have done so in a selective manner.

Communications were sent to the following Governments (Communications that have not received a reply are marked with an asterisk):

- **Australia***, concerning proposed funding cuts in the State of Victoria to the Supported Accommodation Assistance Programme;
- **Botswana***¹⁷, regarding the alleged relocation of hundreds of Bushmen from the Central Kalahari Game Reserve;
- **Brazil**¹⁸, concerning the evictions of a number of families from the Guarani-Kaiowá community living on the Cerro Marangatú territory, and the situation of 100 members of the Guarani indigenous community, members of whom were reportedly shot by cattle ranchers while on indigenous territory. The Government **replied** that, over a two-year period, 9.1 million hectares belonging to indigenous peoples had been certified as indigenous land, including the Cerro Marangatú territory. It also pointed out that an investigation was carried out into the shooting;
- **Bulgaria**, regarding recent and planned forced evictions of Roma in Sofia, without prior consultation, compensation or alternative housing. The Government **replied** that the demolished homes were in inadequate sanitary conditions. It also reported that the decision to demolish other homes was suspended by a ruling of the Sofia City Court, and that alternative possibilities for accommodation of the Roma were being considered;
- **Cambodia***, concerning the eviction of families who have been living on the premises of Preah Monivong Hospital in Phnom Penh allocated to them by the Hospital Chief at the time following the sale of the land by the Government to a private business. A further urgent appeal concerning the threat of imminent forced eviction of residents of Koh Pich Island, in Phnom Penh in order to allow for its development into a "satellite city";
- **China***¹⁹, concerning the alleged arrest of a housing rights activist following his application for legal permission to hold a protest march against forced evictions involving 10,000 people. Further incidents of violations of the rights of housing activists have also been reported;
- **Israel***²⁰, regarding the spread of toxic chemicals on fields located near several villages in the southern Hebron region, which has forced Palestinian farmers to quarantine their flocks, and which reportedly follows threats by an Israeli security guard concerning the grazing of the flocks near an Israeli settlement;
- **The Philippines***²¹, regarding the situation of a housing lawyer and his children, who have been receiving threats following the filing of an administrative case against personnel at the Metro Manila Development Authority and police officers;
- **South Africa***, regarding recent forced evictions in Johannesburg in the context of the Inner city Regeneration Strategy aimed at transforming Johannesburg into a "world class city";
- The Government of **Sri Lanka** sent a **reply** to an earlier communication²², explaining that the Urban Development Authority does not provide alternative accommodations to unauthorised occupants and

¹⁶ E/CN.4/2006/41/Add.1, 23 December 2005.

¹⁷ Joint urgent appeal.

¹⁸ Two joint urgent appeals.

¹⁹ Joint urgent appeal.

²⁰ Joint letter.

²¹ Joint urgent appeal.

²² E/CN.4/2005/48/Add.1, 21 March 2005.

squatters but that it had decided to intervene and identify suitable State land purely on humanitarian grounds;

- **Thailand**²³, regarding the situation of thousands of the Lao Hmong people who had fled Laos for fear of persecution, and were now being evicted from land in the Petchabun Province;
- **Zimbabwe**²⁴, concerning massive forced evictions, which have already affected 200,000 people, being carried out under “Operation Murambatsvina” (which translates to drive out rubbish) designed to “rid the capital of illegal structures, businesses and criminal activities”. It is alleged that there was no prior notice, no opportunity to appeal and no compensation. The Government **replied** that evictions were carried out to rid urban environments of illegal structures and unlicensed trading premises, and that basic entitlements implied in the right to adequate housing did not apply, but that the evictions were carried out with sufficient notice and extensive consultations;
- The **United Nations Interim Administration Mission in Kosovo**²⁵ (UNMIK) regarding Roma, Ashkali and Egyptian internally displaced persons affected by severe lead contamination in camps located near Mitrovica, northern Kosovo. UNMIK **replied**, explaining that it had devised a strategy to provide adequate housing for these communities, and that a viable relocation site had been found. It stressed that obtaining additional funding and implementing consultation with affected communities continued to be challenges. There have been further reports that several children have died from lead poisoning and that the suggested relocation sites are also contaminated.

²³ Joint urgent appeal.

²⁴ Two joint urgent appeals.

²⁵ Joint urgent appeal.