

HUMAN RIGHTS COUNCIL
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**Statement of the Special Rapporteur on adequate housing
as a component of the right to an adequate standard of living,
Mr. Miloon Kothari**

List of reports:

- Report of the Special Rapporteur on adequate housing (E/CN.4/2006/41)
- Communications to and from Governments (E/CN.4/2006/41/Add.1)
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- Mission to Cambodia (E/CN.4/2006/41/Add.3)
- Women and adequate housing (E/CN.4/2006/118)

Mr. President, distinguished delegates, ladies and gentlemen,

I welcome this opportunity to address the Human Rights Council. In my work on the right to adequate housing I have adopted an indivisibility of human rights approach. This has allowed me to use the range of human rights related to the right to housing including the right to security of the person and home, freedom from inhuman and degrading treatment and the right to information and participation.

This approach has assisted me to tackle one of the most pervasive and increasingly destructive violations of the right to adequate housing, the practice of forced evictions.

In my capacity as Special Rapporteur, I have witnessed and increasingly received reports on forced evictions and displacement around the world.

Forced evictions and displacement are taking place in countries world wide, ranging from democratic to authoritarian states. Many are so-called development-based evictions, which include evictions often planned or conducted with the justification or under the pretext of serving the "public good," such as those linked to slum-clearance drives, large-scale infrastructure or other development projects, and land-acquisition measures associated with urban renewal, housing renovation, city beautification, or other land-use programmes. Evictions are also on the rise due to the reluctance of States to control speculation in housing and property.

As we are speaking, at this very moment, someone somewhere is being evicted from their home with little chance of having their right to adequate housing restored.

Mr. President, the shocking fact that faces us today is that the number of people displaced by development processes exceeds even that of those displaced due to armed and ethnic conflict.

The vast majority of forced evictions grossly violate a wide range of human rights and indicate a systematic disregard for recognized human rights standards on the part of States.

Forced evictions push people into homelessness, inadequate housing conditions and poverty. Almost without exception, forced evictions affect the poorest, the socially and economically most vulnerable and marginalized sectors of society, result in loss of livelihoods, and intensify inequality and social conflict, contributing to segregation and the creation of what I call "apartheid cities and villages". The impact on affected communities can be characterised as a human tragedy. Nevertheless, forced evictions continue to occur in total impunity, with rare, if any, reaction by the international community.

Mr. President, distinguished delegates,

While I continue to speak out against forced evictions worldwide I have tried to maintain focus, since the beginning of my mandate, to apply a constructive approach, which would provide practical and concrete solutions aimed at the realization of the human right to adequate housing.

In June 2005, with the German Federal Foreign Office and the German Institute for Human Rights, I co-organized an International Workshop on Forced Evictions, which was held in Berlin. The purpose of the expert workshop was to elaborate guidelines to assist States and the international community in developing policies and legislations to address forced evictions at the domestic level. In light of the outcome of the workshop and in consultation with a wide range of actors, I have prepared a set of basic principles and guidelines on development-based evictions and displacement. These guidelines build on recognised advances in human rights, including General Comment 7 of the Committee on Economic, Social and Cultural Rights and several resolutions, in particular 1993/77 of the Commission on Human Rights. The guidelines attempt to provide practical steps towards ensuring the protection of the right to adequate housing

These include:

1. The need for States to conduct comprehensive impact assessments in advance of evictions that take into account their differential impact on women, children and other vulnerable groups;
2. The need for States to take intervening measures to ensure that market forces, including unbridled speculation of land and property, do not increase the vulnerability of low-income and marginalized groups to forced evictions;
3. The requirement that all affected persons be notified in writing and sufficiently in advance with a view towards minimizing the adverse impacts of evictions;

4. Legal obligations of States to recognize the fundamental human rights of evicted persons to return, resettlement and fair and just compensation;
5. Detailed steps to be taken by States to protect human rights prior to, during and after evictions; and
6. Stringent criteria for initiating and carrying out evictions in exceptional circumstances.

I sincerely hope that the Human Rights Council will welcome these guidelines and that they will contribute to help States, financial institutions, and private enterprises, to prevent violations of the right to adequate housing.

Women and adequate housing

Mr. President, distinguished delegates,

As you are aware, subsequent to the Commission on Human Rights resolution 2002/49 on "Women's equal ownership of access to and control over land and the equal rights to own property and to adequate housing", the Commission had entrusted me with the task of reporting specifically on women and adequate housing.

The third report I am submitting to your attention presents an analysis of several identified obstacles to the effective realization of housing and land rights for women including homelessness among women, violence against women, discriminatory cultural and social norms and family or personal laws, multiple discrimination, privatization of civic services and unaffordability of housing for women, and the impacts of natural disasters, forced evictions and HIV/AIDS on women.

There continues to be a need for States to strengthen national legal and policy frameworks for protecting women's rights to adequate housing, land and inheritance, and to provide avenues for redress where violations occur.

As indicated by testimonies and other information received, there is a culture of silence regarding the prevalence of violations across the world of women's rights to adequate housing and land. The report presents specific suggestions on how to ensure the elaboration of gender-sensitive housing policies and legislation, taking into account the situations of specific groups of women who are at particular risk of being victims of housing rights violations, such as female-headed households, women from ethnic and national minorities and women in conflict or post-conflict situations.

The recommendations include the need for the adoption by the Committee on the Elimination of Discrimination against Women (CEDAW) of a general recommendation on women's right to adequate housing and land; the harmonization at the national level between provisions in international human rights instruments and religious law on inheritance and property; the development of gender-sensitive housing policies and legislation; for States to act with due diligence to prevent, investigate and punish acts of violence

against women; for States to ensure women's access to legal redress and the introduction of laws on domestic violence that include provisions to protect women's right to adequate housing and land. With respect to post-disaster situations, the Special Rapporteur also emphasizes the importance of States, donors and NGOs to ensure that women are able to participate and benefit equally from reconstruction efforts.

Distinguished delegates,

During the period under review by this session of the Human Rights Council, I undertook two country visits, to the Islamic Republic of Iran and to the Kingdom of Cambodia. I also recently visited Australia, the report of which will be presented next year. I have also recently been to Lebanon and Israel as part of a joint mission of four Special Rapporteurs. We will present the report of this mission on October 4, 2006 to the Human Rights Council. I would like to take the opportunity to thank the Governments of these countries for their invitation and to have engaged in a dialogue on the right to adequate housing.

Iran

During the mission to Iran, that took place from 19 to 31 July 2005, I noted the positive steps taken by a number of governmental bodies to improve housing conditions in the country given the adverse context of post-war and post-disaster reconstruction including in the city of Bam.

Nevertheless, I also raised a number of concerns with respect to existing obstacles to the realization of the human right to adequate housing. They mainly refer to the prohibitive costs of housing and policies and programmes which do not seem to result in improved access to adequate housing for the very poor. Four main elements may help to explain such failure: (i) inaccessibility of Government credit facilities, leasing and pro-poor housing savings programmes; (ii) distortions in Government incentives to mass constructors for the production of low-price housing units; (iii) urban bias in the planning of housing programmes; and, (iv) the lack of coordination between different Government branches, agencies and organizations responsible for implementation.

A number of recommendations are formulated in my report to the attention of the Iranian Government. Iran should undertake a legal and administrative review of the doctrine of "eminent domain" that prevents individuals and groups from challenging State acquisition of housing and land. I also request the government to tackle the national crisis of discrimination against women with respect to housing rights, land, inheritance and property and to make attempts to find compatibility between religious laws and interpretations and Iran's commitments to international human rights instruments.

I call in the report for particular focus to uplift human rights in historically marginalized provinces, such as Ilam, Khuzestan and Sistan-Baluchestan.

Ethnic and religious minorities – such as Sufis, Baha'is, Kurds, Laks and Arabs – and nomadic groups are facing continued discrimination. This is reflected in the disproportionately poor housing and living conditions of these groups; considerable number of alleged cases of land confiscation and forced evictions; the poor and limited quantity and quality of basic services provided to informal settlements and poor neighbourhoods.

In Ahwaz, for example, there are thousands of people living with open sewers and without access to water, sanitation, electricity and gas connections. Also in Khuzestan, I visited areas where large development projects are coming up – sugar cane plantations and other projects along the river, which will displace an estimated 200,000 – 250,000 Arabs from their villages.

Since the time of the mission, I have continued to receive information on the adverse impacts of these development projects, including the Arvand-free zone, on Arabs living in this region as well as the continuing situation of discrimination, in the form of property confiscation, faced by members of the Baha'i community.

The Iranian authorities should ensure accountable and transparent public participation in the elaboration of development plans and in the preparation and assessment of housing projects; Iran has to ensure the rigorous implementation of the principle of gender-equality given the lower status women in Iran confront in their struggle for housing, property and inheritance rights.

Iran has also to ensure that the principle of non-discrimination is rigorously applied in all legislations and policies that impact on housing and living conditions, in particular toward ethnic and religious minorities.

Cambodia

I visited Cambodia from 22 August to 3 September 2005.

During this visit, various issues were highlighted. Years of civil war and conflict, followed by land grabbing on a massive scale, have exacerbated land disputes and skewed land ownership patterns to the disadvantage of the rural and urban poor. Land management systems have been unable to address a combined result of the absence of land records which were destroyed during the Khmer Rouge period, an undeveloped and non-transparent land registration system, the absence of cadastral index maps, inadequate land laws and procedures, unclear delineation of state land and the weakness of the justice system. Many of these problems persist, as the Special Representative for human rights in Cambodia has also indicated in his reports.

I have expressed a number of concerns including: (1) the poor implementation of legislation (namely the 2001 Land Law), (2) the issue of land exchanges or "swaps", (3) the plight of indigenous peoples and those facing evictions and displacement, (4) the lack of public services in rural areas pushing these

people to the cities where they face precarious situations, and (5) the particular impact of these phenomena on women's rights to adequate housing and land.

Distinguished delegates,

One of the most worrisome features I witnessed and am still receiving continuous reports on, is the practice of forced evictions in Cambodia.

Since my mission I have tried in many occasions to draw the attention of the Government of Cambodia, through formal communications and public statements made with the Secretary-General's Special Representative on human rights defenders, to the fact that these evictions are carried out in a way that violates a wide number of human rights and that sincere measures should be taken to prevent this. Unfortunately, no response has been received to date.

A high number of forced evictions have taken place in the last years in Cambodia. Only this year, thousands of people have been forcibly evicted or are facing eviction in Phnom Penh and its vicinity such as the communities of the Bassac area including from Samboch Chab, Group 78 and Dei Krahorm Village (Village 15) or in the Monivong Police Hospital area. The situation is not limited to the capital, it also occurs in the provinces where around 960 families have faced evictions (such as in Battambang; Sihanoukville; Kandal; Kompong Speu; Koh Kong; Kampong Cham; Siem Reap; Kampot; Kompong Thom; or Kompong Chhnang).

There has been no public information available on the process by which the land was sold (or swapped) to private companies, the sums involved, the legality of land ownership, or the future use of the land. There have been no consultations with affected communities. Evictions have taken place without alerting those affected about the rights they have to oppose or appeal such decision. Sufficient prior notice has not been given, nor adequate compensation been offered. Affected people did not know prior to the eviction where they would be relocated to, they have simply been told they will be evicted and that it is in their interest to cooperate.

Relocation sites - when made available - are located at the city periphery, are lacking water, sanitation and basic services. Many persons have been left homeless with no livelihood. Most residents of relocation sites still have no guaranteed security of tenure, as promised before relocation. The evictions have led to the further impoverishment and marginalisation of those who already had precious little.

The authorities have carried out the evictions without taking into account any of the objections of the concerned communities, civil society or the international community. On the contrary, the main trend has been the use of threats and intimidation by local authorities and private developers leading to dubious deals, including land concessions, and involuntary relocation or

resettlement without fair and just compensation. This has included the use of military and police forces, the threat to use force, the use of misinformation and rumours, incrimination of representatives for being "political", or for committing criminal offences as well as limiting access by affected families to their houses and discouraging villagers to organize meetings.

I urge the Government of the Kingdom of Cambodia to put a halt to evictions and to adopt a comprehensive national housing policy based on human rights obligations. I also call upon the Cambodian authorities to urgently ensure those who have been evicted are adequately housed and those threatened with evictions are granted security of tenure where they live.

I believe that the use of the basic principles and guidelines on development-based evictions and displacement that I described before would prove very useful in Cambodia.

I hope that the recommendations contained and my reports, as well as those of the Special Representative for human rights in Cambodia, and the increased involvement of UN-Habitat will be effective in ending the unfortunate situation I have just described and will mark the introduction of measures that protect the urban and rural poor.

I also hope that the Government will respond to the communications I have sent, and I remain available for any follow-up to the mission and to assist in any ways the Cambodian authorities.

Australia

This year I appreciated the invitation to carry out a mission to Australia, one of the world's wealthiest countries. In my previous statements to the Commission on Human Rights, I had indicated that the implementation and the realization of the right to adequate housing is not only a matter requiring attention by developing countries.

The report on this mission will be presented next year; therefore, I will not go into details. Nevertheless, I can restate some of the preliminary observations that I have shared with the Australian officials at the end of my mission.

Australia has developed interesting tools, to make housing more accessible to low-income groups, or to support people into affordable housing and assists them in maintaining their accommodation, through programmes such as the Supported Accommodation Assistance Programme (SAAP). Nevertheless, I believe that Australia is facing a housing crisis, especially in terms of the growth of homelessness, issues of affordability and access to public housing and private rental housing. This situation that already impacts on the most disadvantaged groups of Australian society is increasingly going to affect the middle-class of the population as well.

Of major concern in Australia are the housing and living conditions of indigenous peoples. The communities I visited have been living in severely inadequate conditions for decades. It is critical that the Australian Government urgently address what has now become a humanitarian tragedy.

Given the scale of the housing crisis, I also suggest in my preliminary observations, that the Government of Australia considers having a Ministry with a portfolio solely on housing.

Conclusion and recommendations

In conclusion, I would like to reiterate some recommendations and to flag some areas that the Human Rights Council can consider for future:

- On the issue of forced evictions, I believe that the Human Rights Council must play an important role by reaffirming its condemnation of the practice of forced evictions, publicizing tools such as the Guidelines and General Comment 7 of the Committee on Economic, Social and Cultural Rights, and developing accountability and monitoring systems for States' compliance with their legal obligations.
- Consider wide distribution and eventual adoption of the guidelines on development-based forced evictions and displacement.
- Request States to give priority to agrarian reform and to land and wealth redistribution in both urban and rural areas
- Recommend that States adopt legislation and policies, including intervening in the market if necessary, to check against the creation of urban apartheid and segregation.
- Develop and implement legislation that recognises women's rights to housing and land.

In closing I cannot but reiterate the critical importance of the adoption of an indivisibility of human rights, gender equality and non-discriminatory approach by all actors in order to ensure the progressive realisation of the human right to adequate housing.

I thank you for your attention.
