The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, issued the following statement:

Geneva, 7 May: From 12 to 24 April 2007, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, conducted a mission to South Africa to examine the status of the realisation of the human right to adequate housing, paying particular attention to aspects of gender equality and non-discrimination.

During his visit, the Special Rapporteur visited urban and rural areas such as Platfontein (Northern Cape), Sterkwater, Ga-Pila and Mothlaleng (Limpopo), Johannesburg, Pretoria and Ekurhuleni (Gauteng), Durban (KwaZulu-Natal) and Cape Town (Western Cape). Throughout his visit, he met with high-level representatives at State, Provincial and Municipal levels including ministers, judges and parliamentarians. He also met with civil society members, including NGOs, social movements, academics and women’s groups.

The Special Rapporteur acknowledged efforts made by the South African authorities at all levels to address issues related to the realisation of the right to adequate housing since the end of apartheid in 1994, in particular the progress towards democratisation and the genuine attempts by law and policy makers to address issues of racial segregation, inequality and systematic human rights violations. He also recognised the challenges faced by municipalities as they cope with rapid urbanisation across the country.

He commended South Africa’s legal provisions guaranteeing the right to adequate housing and highlighted that South Africa is one of the few countries that has made a legislative and constitutional commitment to the recognition and protection of socio-economic rights, including the right of access to adequate housing (Sections 25(1) and (2) of the South African Constitution). He also noted the important contribution of the South African Constitutional Court to the interpretation of this right since 1996. He highlighted one of its landmark judgements, on the Grootboom case, where the Court found the State was constitutionally required to assist people living in crisis and emergency conditions and the impact that it had in the promotion of the right to housing not only in South Africa, but around the world.

He also welcomed the work of the South African Human Rights Commission in promoting economic, social and cultural rights.

The Special Rapporteur was impressed with several housing and land initiatives designed to help secure an adequate standard of living for all South Africans. He noted the National Housing Subsidy Scheme (NHSS) that has financed the construction of over 2.4 million households since 1994. He also welcomed the National Department of Housing’s ambitious policy, ‘Breaking New Ground’, which seeks to promote sustainable human settlements and cites a commitment to socially inclusive and integrated housing projects and developments and the many policies developed at the provincial and municipal levels.

Nevertheless, a number of problems persist throughout the country. Few mechanisms are in place to ensure that well intentioned policies are implemented. The Special Rapporteur stressed that success cannot be measured merely through the number of houses built but also needs to take into account quality of housing and access to services, especially for the poor.

Despite the legislative framework that bolsters and complements the right of access to adequate housing, it appears that evictions are taking place regularly throughout South Africa, sometimes in the interest of gentrifying urban areas and promoting urban regeneration and devel-
Development. It appears that many such evictions are being executed in breach of procedural requirements and through inappropriate use of ‘urgent eviction’ provisions, where evictions are justified on the grounds of health threats to occupants. The Special Rapporteur is concerned about proposed amendments to procedural protections around evictions. Evictions affect also black farm dwellers in rural areas where over 2 million displacements have taken place since 1994 and backyard shack dwellers who have insufficient tenure protection, as there is currently no regulation of this landlord-tenant relationship.

During his visit, the Special Rapporteur visited a number of informal settlements and was disturbed to see large numbers of people living in desperate conditions, despite the plans of many municipalities for upgrading informal settlements.

Regardless of the origin of new settlements, as a result of large development projects, land restitution claims or the Reconstruction and Development Programme (RDP), the Special Rapporteur observed a failure at all levels of government to provide adequate post-settlement support. In many such cases, communities do not receive even the most basic support services, including proper sanitation, water, access to schools, and access to livelihood options. Moreover, there are few follow-up support mechanisms such as regular maintenance or service repair facilities in cases of resettlement.

The Special Rapporteur also visited large development projects (for instance in Limpopo Province, the Anglo Platinum’s PPL mining project), and had the opportunity to meet communities affected by mining operations. In these meetings and others during his visit, the Special Rapporteur noted that there appears to be insufficient meaningful consultation between government officials and affected individuals and communities. Residents spoke with frustration about the lack of information on resettlement and relocation and of participation in resettlement planning and implementation. As acknowledged in ‘Breaking New Ground’, programmes aimed at delivering housing and creating sustainable human settlements will only succeed where they are directly informed by the people who they affect, and where they are responsive and targeted to the specific needs of a given community.

The Special Rapporteur also noted with concern the large-scale privatisation and outsourcing of public services including basic ones such as electricity and water. There also appears to be few accountability and monitoring mechanisms to ensure that public and private entities involved in the design and delivery of housing programmes and basic services are performing their functions in compliance with law, policy, and human rights standards.

In addition, certain features of cost-recovery policies – such as allocating free water on a household rather than an individual basis – may jeopardise enjoyment of human rights and thus be possibly contrary to the provisions of the Constitution.

The Special Rapporteur was pleased to see the extent of land that has been redistributed to communities that had been dispossessed during the apartheid era. Ninety per cent of land that had been claimed has already been released. The Special Rapporteur welcomes the establishment of administrative mechanisms, such as the Land Claims Commissioner and land acquisition strategies. Commendable goals have also been set to achieve redistribution of 30% of white-owned agricultural land by 2014. In order to achieve these goals the Special Rapporteur recommends that the 2005 Land Summit’s recommendations should be adopted and implemented without delay. In this context, the Special Rapporteur would like to emphasise the indivisibility of human rights, in particular the right to enjoy an adequate standard of living, which implies adequate access to the means that enable its full enjoyment.

The Special Rapporteur is disappointed by the lack of implementation of the recommendations of the Special Rapporteur on the rights of indigenous peoples following his visit to South Africa in 2005, in particular with regard to the issue of land restitution.

The Special Rapporteur acknowledged efforts being made by the Government to meet the goal of delivering 30% of housing to women-headed households. How-
ever, the high prevalence of violence against women, lack of affordable housing, lack of timely access to public housing, and inadequate Government provisions for long-term safe and secure housing, particularly in rural areas, means that many women are forced to either remain in or return to situations of domestic violence, and continue to live in inadequate housing where they risk their own safety as well as that of their children. Such housing problems increase women’s vulnerability to domestic violence as well as to HIV/AIDS.

Regarding housing for groups with special needs (including persons with disabilities, those living with HIV/AIDS, orphans and young people and the homeless), the Special Rapporteur noted insufficiency of support in access to housing and related services, as well as the absence of information. The Special Rapporteur was disturbed to know how long it could take for a person with disabilities to access housing.

Reaffirming the crucial role of civil society, the Special Rapporteur recommended a stronger and closer collaboration between Government and civil society organisations, not only in terms of service delivery, but also in terms of developing avenues for advocacy and dialogue addressed to the authorities in order to elaborate strategies and respond to social problems.

At the end of the visit, several preliminary recommendations were made by the Special Rapporteur including:

- to improve coordination amongst all government departments including housing, water, health, and social services to ensure the promotion of an indivisibility approach to housing;
- to promote a socially and economically inclusive society in the process of rehabilitation of urban areas;
- to consider intervention in the market to regulate the current high and unaffordable prices, and to check against land and property speculation;
- to provide legal aid to people who allege their rights have been breached to ensure they have access to affordable and quality legal representation;
- to implement rigorous monitoring and evaluation of policy, including meaningful consultation with the involvement of affected communities;
- to consider a moratorium on evictions until all national, provincial and local legislation, policies and administrative actions are brought into line with Constitutional provisions and relevant Constitutional Court judgements that protect the right to adequate housing and against evictions;
- to prosecute farmers who illegally evict farm workers;
- to reconsider the privatisation of essential services, including the installation of the water prepaid meters, as it may seriously compromise enjoyment of human rights;
- to create a separate waiting list procedure and formulate a national policy for special needs housing;
- to consider ratifying of the International Covenant on Economic Social and Cultural Rights and implement the concluding observations of treaty bodies.

The official report of this mission, including the final recommendations, will be presented by the Special Rapporteur to the United Nations Human Rights Council.

Notes

1. Still searching for security - the reality of farm dweller evictions in South Africa. (Social Surveys and Nkuzi Development Association 2005).


Miloon Kothari was appointed Special Rapporteur on adequate housing by the UN Commission on Human Rights in 2000. One of his tasks as Special Rapporteur is to undertake fact-finding missions to different countries to study obstacles to the realisation of the right to adequate housing and to recommend practical solutions to this end. Since his appointment in 2000, the Special Rapporteur has undertaken missions to Mexico, the occupied Palestinian territories, Romania, Peru, Afghanistan, Australia, Kenya, Brazil, Iran, Cambodia, Australia, Spain and South Africa.