

**United Nations Special Rapporteur on adequate housing, Miloon Kothari
Mission to Australia**

Preliminary observations

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This document constitutes a preliminary work document containing some of the preliminary observations of the Special Rapporteur at the end of his visit.

An overview of the right to adequate housing and the mandate of the Special Rapporteur can be found to the annex attached to this document.

Purpose of the visit

At the invitation of the Government of Australia, the Special Rapporteur was invited to visit the country with the general objectives of:

- (a) Examining and reporting on the status of realization of the right to adequate housing and other related rights in the country, with particular attention to aspects of gender equality and non-discrimination;
- (b) To engage in dialogues with the Government and the civil society in their efforts to secure these rights;
- (c) To identify practical solutions and best practices in the realization of rights related to his mandate.

The Special Rapporteur wishes to express his gratitude for the invitation of the Government of Australia and hopes that his mission will contribute positively to the implementation of the right to adequate housing in this country. He looks forward to continuing his collaboration with the Australian authorities.

Places visited and meetings

The visit started on 31 July and ends today, 15 August 2006. During his visit, the Special Rapporteur visited the cities of Canberra, Sydney, Brisbane, Darwin, Alice Springs, Adelaide and Melbourne. He visited communities living in rural area such as Lightning Ridge (North South Wales) the Palmerston Indigenous Village (Darwin, Northern Territories), Kuranda, Kowrowa, Mantaka, and Mona Mona (Northern Queensland), Ilparpa, Irrkerlantye and Lytentye Apurte-Santa Teresa (Alice Springs, Northern Territories), and Bendigo (Victoria). The Special Rapporteur also visited an immigration detention centre in Villawood near Sydney.

During his visit, the Special Rapporteur met with the Commonwealth Federal authorities in Canberra. At the State level, he met with the housing authorities, including Minister Weatherall in Adelaide and Minister Hargreaves in the ACT. A meeting was also held in Sydney with the Aboriginal and Torres Islander Social Justice Commissioner, Tom Calma. The Special Rapporteur also held meetings with Senator Bartlett, Senator Siewert, Senator Carr and Professor Mick Dodson.

During his visit, the Special Rapporteur met with a large number of representatives of the civil society, including social workers, support services, academics, women groups and Indigenous representatives. He was very impressed by the level of competence and dedication of these men and women to cope with the numerous problems of the Australian society despite the increasing stress they are working under.

The Special Rapporteur appreciates the extensive efforts made by civil society groups in all States that enabled him to meet with a wide range of affected persons.

Throughout his mission, the Special Rapporteur took testimonies from people directly affected by the shortcoming in the implementation of the human right to an adequate housing including Indigenous peoples, persons experiencing homelessness, domestic violence and discrimination.

Apart from the meeting with high level officials of FACSIA, the Special Rapporteur notes with disappointment that no other high level meeting at Federal level was planned during his mission.

Preliminary observations

1. General Overview

Throughout his visit, The Special Rapporteur was informed of the programs and initiatives at Commonwealth and State level that seek to tackle the issue of adequate housing being accessible to all people in Australia. The Special Rapporteur noted the efforts of housing agencies across Australia to cope with a growing demand and need for public housing and the diminution of the budget they have to work with. He also noted the good practices, such as the Supported Accommodation Assistance Program (SAAP), the “fixing houses for better health” initiative, or the positive collaboration between housing authorities, the Ombudsman office and the Equal Opportunity Commission in Victoria.

Nevertheless, the Special Rapporteur has noted that that while the specific issues communities in the States he visited can vary, the systemic problems are very similar across the country. These problems include:

- The general housing conditions of Indigenous Peoples,
- Widespread unaffordability creating a very large demand for affordable accommodation and public housing,
- Overcrowding,
- Homelessness,
- Inadequate and ageing public housing stock,
- Stigmatization of people living in public housing,
- Waiting lists for public housing up to 10 years,
- Discrimination in accessing private housing, particularly rental accommodation (in particular for peoples receiving social benefits, Indigenous peoples, low income households, households with children, women and people with disabilities),
- Lack of emergency and medium-term accommodations, including women refuges and transitional housing,

- Lack of planning and interest in State policies for rural areas and their needs,
- Uncoordinated approach to the problem of adequate housing, and the lack of understanding of the various components of this right,
- Lack of secure tenure for tenants in both public and private rental accommodation, and
- Lack of appropriate redress mechanisms.

2. A hidden national housing crisis

The Special Rapporteur was particularly troubled by the inadequate housing and living conditions he witnessed in some parts of the country, given that Australia is one of the wealthiest developed countries with a comparatively small population. Unfortunately, this situation is not acknowledged by the authorities.

Throughout his visit and consultations, the Special Rapporteur has come to believe that there is a serious hidden national housing crisis in Australia. This crisis affects many sections of the population, and though having a critical and direct impact on the most vulnerable groups of the population, its impacts also on other segments of Australian society especially on the households with low-income. Unfortunately, there seems to be a lack of reliable disaggregated data on the number of people affected by these issues.

The Special Rapporteur is puzzled that, while the housing problems that he encountered have been present for decades, no efficient result has been achieved on these issues. He fails to understand why housing is not considered as a national priority. The Special Rapporteur would like to once again stress that poor housing conditions has a direct effect on many aspects of other rights of those affected including the right to health, to education, to safety, to public participation, to exercise of civil and political rights, access to justice and the right to be free from discrimination – all of which Australia has committed itself internationally to protecting and promoting.

Whilst the demands for public housing and waiting lists are up to ten years in some States and cities increases, the authorities have not responded by increasing or adequately maintaining the stock they possess. To the contrary, some of the stock has been sold to the private market and not replaced¹. The response to the inadequate of demands and lack of public housing stock has been a constant tightening of the eligibility process to access public housing by the authorities resulting in significant numbers of people unable to access public housing in a timely manner.

Further, within the available public housing, there is a need to have a greater range of styles of public housing to reflect the specific needs of different groups, such as people with disabilities and their carers, larger sized families, single parents with children, public housing in areas where specific services are available (e.g. schools for children, services

¹ According to the Australian Institute of Health and Welfare, in 1999-2000, the number of public dwellings was 362'967 in Australia while in 2003-2004, the number had dropped to 345'335 (Australia's Welfare 2005, p.442).

for people with mental health, torture and trauma counselling services and migrant resource centres for refugees and asylum seekers), and enabling people to access public housing in areas where they have community support, which can be particularly important for Indigenous Peoples, migrants and refugees.

3. Structural and policy shortcomings and the need for a human rights approach

The Special Rapporteur notes that a large number of studies and reports by non governmental groups, academics, universities and research centres are available, and suggestions for amelioration of the system has been put forward to the Government. Unfortunately, he must also note that very little of these findings and recommendations have been taken onboard by the Australian authorities. Unfortunately, it seems that Australia is walking on the same paths as other developing countries, such as the United States of America, and is committing many of the same errors.

Throughout his meetings with officials and civil society, while there are occasional positive initiatives, it has become clear that Australia lacks a clear consistent, long-term and holistic housing strategy, which has been described as a “silo” approach by some. The numerous government programs and sources of funding don’t seem to address the structural problems and therefore, the responses tend to be inefficient, partial and non-sustainable. Moreover, a large bureaucracy within the different layers of governments seems to hamper an efficient allocation and use of these funds. These are the reasons why an overarching human rights approach is needed to design the required strategies.

The Special Rapporteur also notes the trend to weaken the role of social and welfare services, thereby putting both the concerned state authorities and civil society under pressure. For example, in order to reduce the waiting list for public housing, criteria have become more stringent, putting more people in housing stress. The Special Rapporteur is also concerned that the welfare to work policy (with the risk of eight weeks suspension) could affect the ability of public housing tenants to retain their housing rather than providing positive solutions for reducing housing stress.

The lack of public participation and discussion with the concerned communities, as well as the lack of flexibility in social services and “standard” responses, contribute to the fact that the proposed solutions are not sustainable in the long-term. Concrete examples such as the cultural inadequacy of the houses built for Indigenous communities or the material used in some locations have been provided to the Special Rapporteur.

One of the main factors accounting for this lack of response on behalf of the government seems to be generated by the lack of clarity in the common responsibility between the Commonwealth and the States to provide adequate and accessible housing for all. It seems that both Commonwealth and State authorities ascribe the responsibility of the failures to one another. This hampers an effective, urgent and long-term strategy to address the situation, which in some cases could be qualified as a humanitarian crisis.

Moreover, the Special Rapporteur believes that there are some persisting mindsets that contribute to the problem of housing in Australia. For example, to consider housing as a mere commodity does not acknowledge the central role it plays in the development of an individual and of the society on general.

4. Law and international obligations

Unfortunately, Australia has not fully transcribed its international legal obligations into its domestic law. The lack of a rights-based approach in the government's planning leads to numerous breaches of Australia's international and human rights obligations. Particularly striking is the absence of an overall rights based framework, such as a Bill of Rights, that is necessary for ensuring government policies, budgets and programs are developed in ways that realise people's human rights. The Special Rapporteur equally noted the regrettable lack of recognition of the economic, social and cultural rights at federal and state level, despite the constant demand of the civil society.

There is a clear need to explicitly incorporate human rights, including the right to adequate housing, in Australian legislation and to provide for a means of justiciability for these rights. This will enable Australia to better cope with the international obligations it has agreed on. There is also a necessity for addressing discrimination by giving effective ways of implementing the legislation including providing for States to have a pro-active role in this regard. For example, the fact of the Government not adequately addressing discrimination in the private housing market places an additional burden on the public housing market.

The Special Rapporteur also notes the weakness in Australian legislation, its implementation and monitoring in regard to the right to adequate housing. Legislation gives little regard to the rights of tenants and legislations. Tenancy laws or the anti-discrimination acts are difficult to use due to the pressure of the market (fear of retaliation) and the existence of "black-list" databases. Other legislations, such as the anti-social behaviour amendments to the Residential Tenancies Act (NT), clearly do not address the root causes of the problem.

Another area of concern is the enactments of legislation affecting directly or indirectly the right to housing of the Australian population. Legislation such as the new industrial relation laws, welfare to work laws, cuts in public assistance or re-prioritization of target groups for state assistance may have adverse effects on the right to adequate housing and may result in an increase in evictions for non-payment. Already the proportion of revenue that the poorest sections of the population have to pay for their rent causes great stress on other basic needs of these households.

5. Homelessness

Although the number of homeless people around Australia has been evaluated at around 100'000 persons, it seems quite clear that the number is underestimated. This situation is not new, yet it has still not been efficiently addressed.

In 2004-05, the Supported Accommodation Assistance Program (SAAP) provided support to 157,200 homeless people. Of those, 100,400 were adults or unaccompanied children, and 56,800 were accompanying children.

Numerous testimonies were given to the Special Rapporteur of long homeless situations and the lack of possibilities to end the cycle of homelessness. Homelessness often combines with other forms of vulnerabilities such as age, gender, disabilities or mental and health issues.

6. Indigenous Peoples

The Special Rapporteur was particularly disturbed by the adverse housing conditions in the Indigenous communities he visited.

The Indigenous communities in both urban and rural areas in all States visited, are facing a severe housing crisis. This is occurring with respect to the unaffordability, the lack of appropriate support services, the significant levels of poverty and the underlying discrimination. Most disturbing is the absence of adequate and comprehensive participation processes for Indigenous communities in decision-making forums, resulting in some cases in culturally inadequate solutions – options such as share responsibility agreements, due to their ad hoc nature, their conditional approach, and their limitation to individual communities, do not appear to adequately meet this gap. There is an urgent need to establish decision-making processes and institutions, that are representative of all communities, and allow for proper self-determination of Indigenous Peoples.

He notes that the notion of “home” or “house” can be differently perceived by Indigenous and non Indigenous. Housing for Indigenous communities necessitates a close examination of its cultural adequacy to the way of life of these communities.

The Indigenous Peoples experience substantial discrimination in Australia including in accessing adequate housing and private housing market. The Special Rapporteur notes that the so-called “shared responsibility agreements” are very likely to be discriminatory and contrary to international human rights standards.

The Special Rapporteur has previously reported on the indivisible relationship between the right to land and the right to adequate housing - this is even more so for Indigenous communities where land is an integral part of their cultural identity. The amendments to the Aboriginal Land Rights Act (Northern Territory) 1976 submitted in parliament during the Special Rapporteur's visit to Australia, raise grave concerns as to the extent to which the land rights of Indigenous peoples in the NT will be maintained.

It is important for the government to ensure that whatever measures it introduces are not retrogressive in nature, but seek to incrementally build towards the full realisation of human rights. The Special Rapporteur notes with concern reports he has received that there has been insufficient consultation with Indigenous land owners or the opportunity to provide input into this process, particularly on key issues such as the 99-year lease provision. Most concerning, is the potential removal of the role of Indigenous people as decision-makers over the use and access of the land during the lease period. Such measures would undermine the right to self-determination of Indigenous Peoples in the Northern Territory and may call with question Australia's obligations under the International Covenant on Economic, Social and Cultural Rights, including its provisions on self-determination.

7. Women

The Special Rapporteur notes with concern the specific vulnerability of women to inadequate housing, particularly single women, women with children, women within other vulnerable groups (e.g. Indigenous communities, women with disabilities, women refugees and asylum seekers) to inadequate housing, and the specific flow-on impacts of inadequate housing on women. The lack of affordable housing, lack of timely access to public housing, and inadequate government provisions for long term safe housing, particularly in rural areas means that many women are forced to either remain or return to situations of domestic violence, and continue to live in inadequate housing where they risk the safety of their children and themselves. While the government's efforts to raise awareness of domestic violence in the community are acknowledged, greater commitment is required to ensuring that all women are able to access adequate housing, and not be exposed to continuing violence.

The fact of not addressing adequately the housing needs of these groups perpetuate and exacerbate the problems faced by these persons and has negative effects on the society as a whole. For instance, the lack of housing and support for a woman released from prison can lead to her becoming homeless and vulnerable to being placed in situations leading to her re-incarceration.

The Special Rapporteur also notes the relevance of access to health, education, employment and other social services as critical elements of the right to adequate housing. In this regard, women in rural communities are continuing to be disadvantaged, through inadequate provision of health and other services, particularly for pregnancy and maternity care. Given the rural areas cover a large proportion of the Australian terrain, it would seem important to ensure that communities in these areas are provided affordable and accessible services, necessary to ensuring they can continue to live in these areas.

8. Vulnerable groups

Through his meeting with the civil society, the service providers and testimonies he received, the Special Rapporteur established a non-exhaustive list of vulnerable groups affected by the lack of access to adequate housing and facing dramatic situations (Annex II).

Asylum-seekers, immigrants and people out of detention centres, all meet the same problems of accessing to adequate housing, further forcing them into poor living conditions and homelessness.

It is also to note that the lack of construction of houses suitable for persons with disabilities put barriers in their integration in society. The Special Rapporteur suggests that new constructions, both in public and private sectors, should include the necessary arrangements for enabling appropriate use and access by persons with disabilities. This solution would diminish the costs of adapting and modifying dwellings afterwards and would also benefit also other sections of the population such as the elderly (a population that is growing in Australia).

9. Home ownership, affordability and housing economy

Affordability of housing is a growing issue in Australia, and addressing it should be a priority for the Government. According to official figures, out of the 943'877 low-income persons receiving rent assistance, 35% (330'360) were spending more than 30% of their income on rent, and 9% (85,000 peoples) more than 50%. Studies also indicate that there is a growing class of people that are living with a level of revenue that neither entitles them to neither state benefits nor to access private market housing. For these households, the economic pressure of rent is increasing growing (up to 50% of their revenue) and it is feared that they will constitute the future poor class of the population.

The Special Rapporteur believes that the home-ownership model has left aside all those sections of society that do not have enough means for purchasing their homes and those that face serious discrimination. The Special Rapporteur is particularly concerned that the actual system of housing, not only affects the most disadvantaged groups of the Australian society, but is going to affect more and more the middle-class of the population. Already a great number of households are in housing stress for various economic reasons and some are defaulting on their loans and mortgages. The Special Rapporteur believes that in the coming years many others will be left out of the system. Australia should not overlook the possibility in the future of economic hardship that would affect a much larger part of the society.

There seems to be reluctance to try to regulate the market places and therefore, housing is out of the reach of the poor. With Australia's negative gearing policy, perhaps the most generous of all developed countries, and the tax benefit from capital gains, a subsidy of \$ 21 billion is given to the high end market. Even a small amount of this redistributed could significantly alleviate the housing crisis for low-income households.

10. Concerns regarding the relations with the civil society

Another particularly disturbing trend seems to be the difficult relations between the State and civil society, in particular in regard on the issue of advocacy. This issue was highlighted in all States, and in some cases, examples of organizations that have been defunded because of their critical position toward state were provided. In other cases, non- governmental organizations have not attended in meetings because of their fear of being defunded. All organizations have expressed the overwhelming workload they are facing, and feel that they are being used the State to fulfil its shortcomings without being given the means to achieve their goals. The Special Rapporteur wishes to point out that a stronger and closer collaboration with the civil society organizations, not only in terms of service delivery, but also in terms of having open avenues for advocacy and dialogue, is of prime importance in the elaboration of strategies and response to social problems.

Preliminary recommendations

The Special Rapporteur believes that the advancement of a society is to be judge by the way it protects the weakest in the society. He is hopeful that the Government of Australia will engage in an honest review of its duties and to this end, several preliminary recommendations can be made:

- Housing as a human rights approach with the primary task of meeting the needs of the most vulnerable should be adopted,
- A national housing policy based on human rights should be put into place. The Government at Federal level may wish to consider having a Ministry with a portfolio solely on housing,
- Housing and addressing Homelessness and its causes should be listed as a priority for the Government,
- The Special Rapporteur suggests that Indigenous Peoples are given a genuine participatory role in their affairs, through an independent, well-resourced, national body or an organ representing all communities. This constitutes the only way to achieve the required social goals, especially in the area of housing and land rights.
- He recommends the Australian Government to urgently address what can be considered as a humanitarian tragedy of the lack of housing and civic services in Indigenous Peoples areas.
- The current home-ownership model and its possible negative impact on low-income housing options should be seriously reflected upon,
- All concerned parties should be genuinely consulted in designing policies, strategies and planning in housing,
- The Government should engage in a constructive manner with the civil society and advocacy groups, and
- The Special Rapporteur invites the Government of Australia to positively respond to outstanding requests by mandate-holders and to issue an open-ended invitation to all mandate-holders, including the Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous peoples.

Annex I

The Right to adequate housing and the mandate of the Special Rapporteur

The right to adequate housing and the related rights are encompassed in the major international human rights treaties, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) to which Australia is party. For instance, Article 11(1) states that States Parties to the Covenant “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”

A number of elements are determining the adequacy of the right to housing, including:

- **Legal security of tenure**, especially against forced eviction, harassment and other threats.
- **Availability of services, materials, facilities** and infrastructure, in particular water and sanitation, heating and lighting, washing facilities and refuse disposal.
- **Affordability**, in the sense that the costs of housing are not so high as to threaten other basic needs.
- **Habitability**, which requires sufficient space and protection from cold, heat, rain and threats to health, as well as physical safety of occupants.
- **Accessibility** should be given priority consideration in both law and policy on housing, in particular in regard to disadvantaged groups, including the elderly, the mentally and physically ill and the disabled,
- **Location** must allow access to employment, health-care, schools and other social facilities.
- **Cultural adequacy**, which is the way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing.

The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living was appointed in September 2000 by the Commission of Human Rights. His mandate includes, *inter alia*, reporting on the status of the realization of the rights relevant to adequate housing worldwide; to undertake country missions and to examine and report on the status of realization of the right in those countries; give particular attention problem faced by women to access adequate housing; and consider factors contributing to discrimination in regard to the issues relevant to his mandate. It should be noted that since the beginning of his mandate, the Special Rapporteur has stressed the indivisibility of human rights, without which the right to adequate housing loses its meaning.

Annex II:
List of vulnerable groups (non-exhaustive) for which there is an urgent need to address the situation

1. Homeless people
2. Children
3. Women (including Women Affected by Domestic Violence, Women in Rural and Regional Australia, pregnant women, women with new-born and single women with elderly children)
4. Indigenous peoples
5. People with disabilities and health problems (including mental health)
6. Peoples with low income
7. Refugees and asylum-seekers
8. Migrants
9. Prisoners and persons released from detention
10. Youth
11. Elderly
12. Persons with complex needs (e.g. HIV/AIDS, sexual minorities)
13. Single parents
14. Rural and remote communities