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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,
POLITICAL, ECONOMIC SOCIAL AND CULTURAL RIGHTS,
INCLUDING THE RIGHT TO DEVELOPMENT**

**Report of the Special Rapporteur on adequate housing as a component
of the right to an adequate standard of living, and on the right to
non-discrimination in this context, Miloon Kothari***

* The present report is submitted after the deadline in order to reflect the most recent information.

Summary

The present report constitutes a review of the work and activities of the first Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Miloon Kothari, since his appointment in 2000. It aims to provide a number of recommendations to the Council and the next mandate holder in relation to the main obstacles to the realization of the human right to adequate housing (lack of legislation and implementation of the right to adequate housing, homelessness, forced evictions, discrimination, access to water and basic services and affordability) and on the development of the mandate.

The Special Rapporteur confirms his broad interpretation of the right to adequate housing based on the indivisibility and universality of human rights and in this context he underlines the utmost importance that the struggle against discrimination plays in the realization of the right to adequate housing. He recalls the tools elaborated during his term (the Basic principles and guidelines on development-based evictions and displacement, the questionnaire on women and adequate housing, the questionnaire on the right to adequate housing, and the development of indicators to monitor progressive realization of the right to adequate housing) and encourages relevant actors to employ them, as well as to further develop and adapt them to national and local situations.

The Special Rapporteur strongly advocates a combination of a humanitarian and human rights approach to address the situation of millions of people living in grossly inadequate housing conditions and those facing homelessness and landlessness. To develop the mandate, he calls for stronger support and response from States and proposes the issues for further consideration, including the recognition of the link between access to land and the human right to adequate housing; rural areas; natural disasters and humanitarian emergencies; climate change; and the role of civil society. He finally addresses and reiterates a set of recommendations elaborated during his term and presented in his reports, including on women's rights to housing, land, property and inheritance.

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Introduction

1. The present report constitutes a review of the work and activities of the first Special Rapporteur on the right to adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context since his appointment by the Commission on Human Rights in 2000 in its resolution 2000/9, later extended by the Commission in its resolution 2003/27 and the Human Rights Council in its resolution 6/27.
2. The report mainly focuses on obstacles to the implementation of the right to adequate housing and issues that would require further attention of the Human Rights Council in order to achieve the realization of the right to adequate housing. In the last section, the Special Rapporteur makes recommendations to the Council and the next mandate holder.
3. Given that this is his final annual report to the Human Rights Council, the Special Rapporteur would like to gratefully acknowledge the extensive support given to his mandate by the Office of the United Nations High Commissioner for Human Rights (OHCHR), especially by all his assistants, since the inception of the mandate.

I. APPROACH TO THE RIGHT TO ADEQUATE HOUSING

4. Since the beginning, the Special Rapporteur has advocated, through his reports¹ and activities, a broad interpretation of the right to adequate housing. He has always adopted an approach stressing the indivisibility of human rights, without which the right to adequate housing loses its meaning. Through his work, the Special Rapporteur has demonstrated that existing interlinkages between the right to adequate housing and congruent human rights, such as the rights to food, water, health, work, land, livelihood, property, and security of person, as well as protection against inhuman and degrading treatment, non-discrimination and gender equality, are at the core of the realization of the right to adequate housing. His approach has been articulated in the definition that he has developed: “The human right to adequate housing 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.” This definition, and the broad conception of the fundamental human right that it encompasses, has received validation from many different actors across the world.
5. The Special Rapporteur has worked on various elements of the right to adequate housing. He subscribes fully to the interpretation given to the right to adequate housing by the Committee on Economic, Social and Cultural Rights (CESCR).² In his work, he has identified additional elements that provide a more complete conception of this right, also taking into account its civil and political rights dimension. Through consultations and studies, the Special Rapporteur has

¹ See for instance his first report, E/CN.4/2001/51. The reports of the Special Rapporteur are available at <http://www2.ohchr.org/english/issues/housing/index.htm>.

² See in particular Committee on Economic, Social and Cultural Rights (CESCR) general comments Nos. 4 (1991) on the right to adequate housing (article 11 (1) of the Covenant) and 7 (1997) on the right to adequate housing (article 11 (1) of the Covenant): forced evictions.

identified 14 elements arising from international treaty obligations and their interpretation by expert bodies. These elements, in their entirety, form the basis of a methodology that could be applied to assess both the realization and the extent of violations of the human right to adequate housing.³ These elements are:

1. Security of tenure;
2. Public goods and services;
3. Environmental goods and services (including land and water);
4. Affordability (including access to finance);
5. Habitability;
6. Accessibility (physical);
7. Location;
8. Cultural appropriateness;
9. Freedom from dispossession;
10. Information, capacity and capacity-building;
11. Participation in decision-making;
12. Resettlement;
13. Safe environment;
14. Security (physical) and privacy.⁴

6. During his country missions and in his reports the Special Rapporteur has also identified particular protection measures in relation to the fulfilment of the right to adequate housing. One such protection measure has been the call for a combination of a humanitarian and a human rights approach to confront the situation of millions of people living in grossly inadequate housing conditions and those facing homelessness, landlessness, displacement and related violence.⁵ These conditions are one reflection of the state of poverty that persists across the world and call for immediate measures to be taken by States.

³ E/CN.4/2003/5, paras. 60-61.

⁴ See also reports and questionnaire on women and housing available at <http://www2.ohchr.org/english/issues/housing/women.htm>.

⁵ E/CN.4/2005/48.

7. Another protective measure advocated by the Special Rapporteur has been the need for immediate recognition of the right to adequate housing, in law and policy and through budgetary commitment. This recognition, consistent with international human rights obligations needs to be followed up by implementation of the right. As the Special Rapporteur has stated, such measures are necessary as a bulwark against the relentless march of economic and social transformation which does not always favour the most vulnerable, including in relation to housing. The acquiescence and at times direct complicity of States in allowing markets unfettered dominance over housing and property rights is one of the major factors which makes adequate housing inaccessible to low and middle income communities.

II. MAIN OBSTACLES TO THE REALIZATION OF THE RIGHT TO ADEQUATE HOUSING

8. During his term, the Special Rapporteur has observed a number of obstacles to the realization of adequate housing which he wishes to briefly comment on before presenting recommendations at the end of this report.⁶

A. Lack of legislation and implementation of the right to adequate housing

9. During his missions and contacts with official representatives, the Special Rapporteur has observed that a great many States do not have constitutional and legal provisions and policies on the right to adequate housing. In many cases, Governments have not made the necessary efforts to translate such international obligations into national legislation. In spite of the growing evidence from international and regional human rights bodies confirming the justiciability of the right to adequate housing, national legislative and policy frameworks and Court decisions in the majority of national jurisdictions, do not encompass the human rights aspects of adequate housing. The prevalent tendency is to view housing, land and property as marketable commodities rather than as human rights that call for the protection, first and foremost, of vulnerable communities, and for housing to be treated as a social good.

10. The Special Rapporteur has consistently supported the adoption of the proposed Optional Protocol to the Covenant on Economic, Social and Cultural Rights, which would further clarify the justiciability of the right to adequate housing.

B. Homelessness

11. In his 2005 annual report,⁷ the Special Rapporteur identified homelessness as one of the most visible and severe symptoms of the lack of respect for the right to adequate housing.

⁶ See, inter alia, E/CN.4/2006/41, para. 29 and E/CN.4/2001/51, paras. 56-86. See also: The Chronicle interview: Miloon Kothari, *UN Chronicle*, vol. XLIII, No. 1 (2006) and Miloon Kothari, "The right to adequate housing is a human right", *UN Chronicle*, vol. XXXVIII, No. 1 (2001).

⁷ E/CN.4/2005/48.

12. Developed countries are also gravely affected by this phenomenon. Although their financial resources are sufficient for achieving a high degree of realization of the right to adequate housing, they have not been able to prevent and resolve homelessness. In particular, homelessness as a result of housing affordability is severely impacting low-income families and progressing to include higher-level income households.

13. Causes for homelessness are diverse and multifaceted, including a lack of security of tenure, speculation in housing and land for investment purposes, and unplanned and forced urban migration. Added to this are destruction and displacement caused by forced evictions, conflicts, large-scale development projects or natural disasters.⁸

14. Affordability, one of the elements of the right to adequate housing, constitutes one of the main factors of homelessness. In this context, the Special Rapporteur notes with concern that urban “gentrification” processes, accompanied by rising property values and rental rates, are pushing low-income families into precarious situations, including homelessness.

15. The failure of legal systems to protect homeless and landless people across the world is coupled with a tendency to criminalize them and appears to be part of the trend towards increasing violence against them.

C. Forced evictions

16. Whilst the Commission on Human Rights in its resolution 1993/77 recognized forced evictions as a gross violation of human rights, and particularly the right to adequate housing, this phenomenon continues with full force.⁹ This situation led the Special Rapporteur to devote one of his reports to this important issue¹⁰ and to subsequently lead an effort to develop operational standards on the subject.

17. Forced evictions constitute a violation of a wide range of human rights, and push people into poverty, homelessness and inadequate housing conditions. They have particularly adverse effects on women, children, and groups facing discrimination, such as indigenous peoples and minorities, and the socially and economically vulnerable and marginalized sectors of society.

18. Forced evictions result in displacement, loss of livelihood, property and belongings, and physical and psychological injury to those affected. The Special Rapporteur has proposed a range of measures that may be taken in order to address forced evictions, including: the adoption of national policies and legislation; the development by OHCHR of indicators on forced

⁸ Ibid.

⁹ See for instance *Forced Evictions: Violations of Human Rights - Global Survey 10*, Centre on Housing Rights and Evictions (2006), available at http://www.cohre.org/view_page.php?page_id=10 or *Victims of the Violation of Housing and Land Rights*, Housing and Land Rights Network (2007), available at <http://www.hlrn.org/>.

¹⁰ E/CN.4/2004/48.

evictions; increased focus by treaty monitoring bodies on issues related to forced evictions; integration of work on forced evictions into the mandates of United Nations agencies and bodies and bilateral and multilateral initiatives.¹¹

19. In order to give States and the international community practical tools to prevent the violation of the right to adequate housing as a consequence of forced evictions due to development projects, the Special Rapporteur presented a set of Basic principles and guidelines on development-based evictions and displacement to the Human Rights Council in his preceding report.¹² These guidelines address various situations including evictions planned or conducted in apparent pursuit of the “public good”, such as those linked to development and infrastructure projects (including large dams, large-scale industrial or energy projects, or mining and other extractive industries); land acquisition measures associated with urban renewal, slum upgrades, housing renovation, city beautification, or other land-use programmes (including for agricultural purposes); property, real estate and land disputes; major international business or sporting events; and, ostensibly, environmental purposes, as well as activities supported by international development assistance.

20. The guidelines offer several new prescriptions, based on information gathered worldwide since 1997, which render more clearly the obligations of States in this context. These include: 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; calling for States to take intervening measures to ensure that market forces do not increase the vulnerability of low-income and marginalized groups to forced eviction; affirming the obligation of States to recognize the fundamental human rights of forcibly evicted persons to return, resettlement, and fair and just compensation; and the requirement that all affected persons be notified in writing and sufficiently in advance with a view to minimizing the adverse impact of evictions; the enumeration of detailed steps to be taken by States to protect human rights prior to, during and after evictions; and the establishment of stringent criteria for initiating and carrying out unavoidable evictions in exceptional circumstances.

21. The Special Rapporteur welcomes the consideration of and decisions on forced evictions from various treaty bodies, including the link made by the Committee against Torture (CAT) between forced evictions and breaches of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹³

¹¹ Ibid. See also E/CN.4/2003/5/Add.3 and E/CN.4/2005/48/Add.3, paras. 70-72.

¹² A/HRC/4/18, annex I. See also the Special Rapporteur’s web page on forced evictions available at <http://www2.ohchr.org/english/issues/housing/evictions.htm>.

¹³ The Committee against Torture (CAT) has considered that burning or demolishing houses may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment (article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). See for instance communication No. 161/2000, *Hajrizi Dzemajl et al. v. Yugoslavia*, para. 9.2 and CAT/C/XXVII/Concl.5, Conclusions and Recommendations of the Committee against Torture: Israel, para. 6 (j).

D. Discrimination

22. In the context of the indivisibility and universality of human rights, it is important to recognize that the struggle against discrimination is of the utmost importance in achieving the right to adequate housing. The realization of the right to adequate housing in an environment free from discrimination will have a direct bearing on other congruent human rights, including the right to life, the right to an adequate standard of living, the right to freedom of movement and residence, the right to protection against arbitrary or unlawful interference with privacy, family and home, and the right to participation in public affairs.¹⁴

23. Discrimination and segregation in housing can be based not only on grounds of race, class or gender, but can also result from poverty and economic marginalization.¹⁵ The Special Rapporteur has expressed concern, in various mission reports, regarding the continued discrimination faced by ethnic and religious minorities and nomadic groups, as reflected in the disproportionately inadequate housing and living conditions of these groups; the considerable number of alleged cases of discriminatory land confiscation and forced evictions; discrimination against women with respect to housing rights, land, inheritance and property; and the poor and limited quantity and quality of basic services provided to informal settlements and low-income groups and neighbourhoods.

24. The placing of the discrimination aspects of housing within the context of the indivisibility and universality of human rights is critical. The realization of the right to adequate housing in an environment free from racial discrimination will have a direct bearing on other congruent human rights, including the right to life, the right to an adequate standard of living, the right to freedom of movement and residence, the right to protection against arbitrary or unlawful interference with privacy, family and home, and the right to popular participation.¹⁶

25. Forced evictions based on ethnic grounds intensify inequality, social conflict, segregation and “ghettoization”, and invariably affect the poorest, most socially and economically vulnerable and marginalized sectors of society.¹⁷ The Special Rapporteur has brought these issues to the

¹⁴ Non-discrimination is a fundamental principle of international human rights as strongly reflected in the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination.

¹⁵ See E/CN.4/2002/59.

¹⁶ *Ibid.*, para. 38.

¹⁷ See joint statement by the Council of Europe’s Commissioner for Human Rights, and the Special Rapporteur on the right to adequate housing of 24 October 2007 available at <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/824CB02DF5A5C358C125737E00367C30?opendocument>.

attention of relevant world conferences and relevant treaty bodies including the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination.¹⁸

E. The human right to water and sanitation

26. As stated by the Special Rapporteur throughout his mandate, access to water is a prerequisite to the realization of a range of human rights, including the right to adequate housing. A house is not liveable without access to potable water. As a human right, the right to water should entitle everyone, on the basis of non-discrimination, to sufficient, safe, physically accessible and affordable water, which is of an acceptable quality, for personal, domestic and subsistence uses. In his 2003 report,¹⁹ the Special Rapporteur emphasized the importance of water and sanitation in the context of the right to adequate housing.

27. While the CESCR general comment on the right to water²⁰ and current Human Rights Council debates have been landmarks in the recognition of the right to water as a human right, the poor and other marginalized groups have the greatest difficulty in accessing sufficient and safe water and adequate sanitation. In many slums and informal settlements around the world, having no water connection means that residents have to pay higher prices to buy water. In rural areas, women and children often have to walk great distances in search of water to meet minimum household needs. Diseases associated with contaminated drinking water and unsanitary living conditions are among the leading causes of ill-health, and a significant contributor to infant and child mortality in developing countries.²¹

28. The consequences of inadequate or no access to water are particularly devastating for women and children. When water is not readily available, they are the ones that have to spend a large amount of time finding and fetching it. Inadequate access to water in rural areas also leads to a vicious circle of lower agricultural yields for subsistence and income generation, deepening poverty. This has a detrimental impact on health, security and education.

29. Lack of sanitation facilities affects both men and women, but sanitation needs and demands differ with gender. Women have particular privacy, dignity and personal safety needs and concerns. The lack of sanitation facilities at home can often force women and girls to use secluded places outside, exposing them to the risk of sexual abuse.

¹⁸ See, for example, the contribution of the Special Rapporteur to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/CONF.189/9).

¹⁹ E/CN.4/2003/5.

²⁰ General comment No. 15 (2002) on the right to water (articles 11 and 12 of the Covenant).

²¹ See Miloon Kothari, "Privatising human rights - the impact of globalisation on adequate housing, water and sanitation", *Social Watch* (2003), available at <http://www.socialwatch.org/en/informesTematicos/66.html>.

F. Affordability

30. Across the world, the growing unaffordability of housing, land and property, is responsible for increasing the number of people who are homeless and have to resort to living in inadequate and insecure housing conditions. The inability or unwillingness of States to control speculation and rein in rising rental and home prices through appropriate intervention in the market, is a major obstacle to the implementation of the right to adequate housing.

31. Trends reveal that this affordability crisis is affecting not only the poor but also low-income groups and even the middle class. More and more people are suffering from the impact of rising prices of housing and land, especially in urban areas. This results in additional people defaulting on their rents or mortgages.

32. Many factors, including speculation on land and housing, explain this situation. Urban renewal, city beautification, and the creation of so-called world class cities have contributed to boosting property prices in cities, diverted land use for higher income groups and pushed the poor further to the periphery.

33. The resulting creation of spatially separated settlements for the rich and the poor in urban and rural areas, has at times been described by the Special Rapporteur as “urban and rural apartheid”. He has also warned about the fact that an increasing number of housing developments are being built for the wealthy, while the poor are being evicted or forced to live in slums or inadequate housing without access to basic civic services. Slums and squatter settlements arise in part due to the colossal gap in the supply of affordable housing in the formal sector. The Special Rapporteur is also concerned about reductions in public housing expenditure, pressures on rental housing, and declining housing and civic services subsidies for the poor.

34. The affordability crisis is further aggravated by the lack of housing finance for the bottom 20 to 25 per cent of the population. As pointed out in numerous country mission reports²² there is an urgent need for Governments to reorient, and make more flexible, housing finance institutions and instruments so that lower income groups can access resources.

35. The subprime market crisis that originated in the United States in 2007 has exposed the irresponsible practices of banks, real estate entities and local and national Governments and international financial institutions that continue to present the homeownership model as the panacea for the global housing crisis. The Special Rapporteur emphasises that this preference for market-driven homeownership is misplaced and undermines the housing rights of poor and middle-income groups across the world. A human rights-based approach would instead appear to call for a continuum of approaches, placing equal emphasis on different tenure options ranging from hostels, boarding homes, rental, cooperative, land sharing and so forth.

²² See for example E/CN.4/2004/48/Add.1, A/HRC/4/18/Add.2 or A/HRC/7/16/Add.2.

III. THE REALIZATION OF THE RIGHT TO ADEQUATE HOUSING FOR SPECIFIC GROUPS

A. Women and adequate housing

36. Through his work, the Special Rapporteur has placed particular emphasis on the gender dimension of the right to adequate housing. In its resolution 2002/49 entitled “Women’s equal ownership of access to and control over land and the equal rights to own property and to adequate housing”, the Commission on Human Rights entrusted the Special Rapporteur with the additional task of conducting a global study on women and adequate housing.

37. To achieve this objective, the Special Rapporteur conducted a range of dialogues with States and civil society, elaborated a questionnaire on women and adequate housing,²³ and organized seven regional consultations, reflected in his three reports on this question.²⁴

38. Critical factors affecting women’s rights to adequate housing and land are lack of secure tenure; lack of information about women’s human rights; lack of access to affordable social services; lack of adequate laws safeguarding women’s equal rights to housing, land, property and inheritance; lack of access to credit and housing subsidies; bureaucratic barriers preventing access to housing programmes; rising poverty and unemployment; and discriminatory cultural and traditional practices. The Special Rapporteur notes that a State’s obligation to eliminate gender discrimination is one of immediate effect and failure to do so constitutes a human rights violation.

39. There is an urgent need to address multiple forms of discrimination that women face on grounds including race, class, ethnicity, caste, health status, disability, income, sexual orientation, and other factors. An intersectional approach to gender discrimination is essential to address the multiple forms of discrimination faced by women.²⁵ Other categories of women may face further discrimination due to their status, including women affected by domestic violence, women in rural and remote areas, women affected by HIV/AIDS, pregnant women, women with newborn children, and single women, including single mothers.

40. The work on women and housing has clearly demonstrated the clear link between violence against women and the human right to adequate housing, and the crucial importance of an intersectional approach to the problem. In its resolution 2005/25, the Commission on Human

²³ See A/HRC/4/18, annex III or the Special Rapporteur’s web page on women and housing available at <http://www2.ohchr.org/english/issues/housing/women.htm>.

²⁴ E/CN.4/2003/55, E/CN.4/2005/43 and E/CN.4/2006/118 also available at <http://www2.ohchr.org/english/issues/housing/women.htm>.

²⁵ Study by the Special Rapporteur on Women and adequate housing, E/CN.4/2005/43.

Rights requested the Special Rapporteur to cooperate with the Special Rapporteur on violence against women, its causes and consequences, in the elaboration of model provisions to protect women's rights in housing and domestic violence legislation, to ensure women's full and equal access to national legal aid schemes to protect their housing, land and property rights in cases of divorce, inheritance and domestic violence. These model provisions are under preparation.

41. The Special Rapporteur encourages OHCHR to publish a study which will analyse and present the wealth of material, testimonies, and case studies generated by the work on women and housing.

B. Children and adequate housing

42. Since his first report²⁶ the Special Rapporteur has drawn the attention of the international community to the integral link between children's housing rights and living conditions and their cognitive, physical, cultural, emotional and social development, particularly as children are disproportionately vulnerable to the negative effects of inadequate and insecure living conditions.²⁷ A house must be perceived as a home, a stable point in a child's life she/he can return to with a sense of safety and security.

43. Numerous reports have documented an increase in the number of homeless children around the world and the plight of children living in distressed housing. This is reflected in the conditions and circumstances of children living in slum and squatter settlements, on streets and other perilous locations, and in shelters made of hazardous materials. The situation of children living in especially difficult circumstances requires special and urgent attention. These include: children with physical and mental disabilities; victims of natural and human-made disasters; refugee children; street children; slum and migrant children; orphans and destitute children; children affected by HIV/AIDS (including children of parents with HIV/AIDS and AIDS orphans as well as those infected); child prostitutes; children of sex workers; children in conflict with the law; and child labourers.

44. In accordance with the provisions of article 20 of the Convention on the Rights of the Child, the Special Rapporteur has recommended that States should ensure that "no child will be subjected to discrimination with regard to his or her right to adequate housing on the grounds of his or her parents' race, colour, national or ethnic origin, sex, property or other status, and that special protection and assistance be provided to children living in the streets and those temporarily or permanently deprived of a family environment".²⁸

²⁶ E/CN.4/2001/51.

²⁷ During his term, the Special Rapporteur has particularly noticed how children tend to suffer disproportionately both in the short and long term, from the loss of homes, shelter and possessions. When children lose their homes, they also lose their source of security; they lose their psychological shelter.

²⁸ See guidelines on housing and discrimination in E/CN.4/2002/59.

C. Indigenous peoples and adequate housing

45. As a result of historical and contemporary dispossession and discrimination, indigenous peoples worldwide experience socio-economic disadvantages that gravely impact their human right to adequate housing and the opportunity to use their resources for their development. In this context, the interlinkage between adequate housing and indigenous peoples' access to and control over land and other natural resources is clear.²⁹

46. During various country missions, the Special Rapporteur witnessed discrimination against indigenous peoples and made a number of recommendations.³⁰ The elimination of obstacles faced by indigenous peoples, including discrimination and inequalities, poverty, and unemployment is essential for the implementation of their right to adequate housing.

47. The Special Rapporteur believes that the recognition of the right to self-determination and of the right to land, as well as genuine participation in decision-making processes, is essential for the realization of the human rights of indigenous peoples, including their right to adequate housing.

48. The Special Rapporteur welcomes the adoption of the United Nations Declaration on the Rights of Indigenous Peoples³¹ and hopes that due consideration and implementation of it by States will contribute positively to the right to adequate housing of indigenous peoples and communities.

D. Groups requiring special attention

49. Throughout his work, the Special Rapporteur has identified a number of groups that need particular attention and protection in regard to the right to adequate housing. These groups include inter alia: persons with disabilities and/or health problems (including persons with complex needs such as those affected by HIV/AIDS or psychosocial disabilities and those critically ill); refugees and asylum-seekers; prisoners and persons released from detention; victims of domestic abuse and violence; and orphans.

50. As pointed out by CESCR, disadvantaged groups, including persons with disabilities, must be accorded full and sustainable access to adequate housing resources, and housing law and policy should take fully into account the special housing requirements of such groups.³²

²⁹ See, *Indigenous Peoples' Right to Adequate Housing: A Global Overview*, United Nations Housing Rights Programme, report No. 7, (Nairobi, OHCHR-UN Habitat, 2005).

³⁰ See mission reports to Brazil (E/CN.4/2005/48/Add.3), Australia (A/HRC/4/18/Add.2), Mexico (E/CN.4/2003/5/Add.3), Peru (E/CN.4/2004/48/Add.1) or Cambodia (E/CN.4/2006/41/Add.3).

³¹ General Assembly resolution 61/295.

³² General comment No. 4 (1991) on the right to adequate housing (article 11 (1) of the Covenant), para. 8 (e).

51. As noted in a study that identifies the requirements of groups in need of special attention in South Africa, “special needs” housing can take the form of emergency shelters (short-term accommodation); shelters (medium-term accommodation); second stage housing (short-term rental accommodation); community care homes; home based care; and individual housing (ownership).³³

IV. ACTIVITIES OF THE MANDATE

A. Tools for the realization of the right to adequate housing

52. Since the beginning of his mandate, the Special Rapporteur has stressed the importance, as have numerous treaty bodies, of reliable and clear statistics and indicators to assess the progress made by States towards the realization of the right to adequate housing. Unfortunately, as has been evident during his country missions, many States do not incorporate the human rights perspective in statistical data. In some cases, even basic indicators, such as the number of homeless people, are unavailable, let alone data at a disaggregated level.

53. In the context of its work for the international human rights treaty bodies, OHCHR organized subregional workshops and consultations at country level in 2007 for piloting the conceptual and methodological framework on statistical information and other appropriate indicators to promote and assess the implementation of human rights, including the right to adequate housing. Participants were experts from national statistical agencies, policymakers, national human rights institutions and civil society organizations. An expert consultation organized by OHCHR in December 2006 for its work for the treaty bodies, which involved the Special Rapporteur and experts from UN-Habitat, identified a preliminary set of statistics on the right to adequate housing.

54. As a follow-up, work was initiated on the compilation of metadata on each indicator, whether structural, process or outcome indicators. Such information, which is to be reflected in “metasheets”, aims at supporting the use of relevant statistics and providing detailed information on their definition, rationale, method of computation, primary and secondary data sources, level of disaggregation, periodicity and any other relevant comments and limitations. The elaboration of such metadata draws essentially on existing sources, including databases of United Nations agencies and examples of standardized information collected by civil society organizations. The development of metasheets benefited from workshops and consultations organized at country level. The Special Rapporteur would like to reiterate his support to this piloting and sensitization process supporting the development of contextually relevant and viable statistical information on the implementation of the right to adequate housing at country level. The Special Rapporteur would also like to express his appreciation to the national human rights institutions of India and Uganda which took an active part in the organization of two subregional workshops. The Special Rapporteur calls on States to organize follow-up initiatives at country level and recommends further collaboration with OHCHR and UN-Habitat on indicators on adequate housing.

³³ See Lilian Chenwi, “Giving effect to the right to adequate housing”, *ESR Review*, vol. 7, No. 4, (December 2006), p. 10.

55. The Special Rapporteur has submitted to the attention of States and civil society two questionnaires: one on the elements of the right to adequate housing, the other on women and adequate housing.³⁴ These questionnaires have been useful in obtaining information needed for the advancement of the conceptual understanding of the right to adequate housing and in implementing the mandate of the Special Rapporteur. They have also been widely used as tools to ascertain gaps in national legislation and the state of implementation of the right to adequate housing.

B. Collaborative work

56. In the face of growing human rights challenges and the need to demonstrate the practical application of approach indivisibility of human rights, the Special Rapporteur has sought to collaborate closely with other mandate holders and treaty bodies on a wide range of economic, social and cultural as well as civil and political rights issues. These include food, health, education, internal displacement, racism and discrimination, indigenous peoples, minorities, toxic wastes, violence against women, human rights defenders, arbitrary detention, torture, summary executions and independence of lawyers and judges. In the course of this collaboration, the Special Rapporteur undertook joint missions and visits that were very useful in order to grasp the complexity of national and local situations and stress the need to address them in a holistic manner because of the close linkage between various human rights.³⁵

57. Throughout his mandate, the Special Rapporteur has emphasized the need for cooperative work between special procedures and treaty bodies and has collaborated actively with these mechanisms, in particular with CESCR, the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination Against Women and the Committee on the Elimination of Racial Discrimination. This collaboration has comprised regular exchanges of information and ideas between the treaty bodies and the Special Rapporteur, work on general comments, participation at days of general discussion and the development of monitoring tools.

58. The Special Rapporteur believes that much more collaborative work is needed within the United Nations system to support the implementation of human rights and the right to adequate housing. There is room for a much closer and more coordinated collaboration between the special procedures mandate holders and the treaty bodies, United Nations agencies at the global and national levels and international financial institutions. This collaboration would result in better coordination and response to human rights issues, better follow-up on recommendations of these mechanisms and greater support for countries in their efforts to consider these recommendations.

59. There is a need for greater integration of the work of special procedures across the United Nations system. There is limited knowledge about the human rights aspects of housing and this needs to be addressed. Moreover, further mainstreaming of human rights in the United Nations system is required, as there is often reluctance by some agencies to incorporate

³⁴ See footnote 22 above.

³⁵ See for instance A/HRC/2/7 and A/HRC/7/16/Add.1.

the human rights approach, erroneously perceived as “politicizing” their work. Unfortunately, without the adoption of a human rights approach, their efforts may not be effective or may even prove counterproductive.

60. In his efforts to mainstream the right to adequate housing in the work of international organizations, the Special Rapporteur has engaged actively with the International Olympic Committee in regard to the organization of mega-events, an initiative that should be continued by the next Special Rapporteur.

V. DEVELOPMENT OF THE MANDATE

A. Need for further support and response from States

61. While certain States have seriously engaged with the Special Rapporteur in his work, others have shown less commitment. The reasons for this may be multiple. The lack of adequate staffing and resources within Government to engage with human rights mechanisms, as well as to cope with the new Human Rights Council system, could be one of the reasons. Ideological and/or political motivations and internal conflict within various Government departments about the relevance of the human rights approach (such as Ministries of Trade, Finance and Housing) may explain other situations.

62. In some cases, the Special Rapporteur may have faced non-responsiveness because the violations of the right to adequate housing touch upon issues such as the pre-eminence given to land and housing as speculative capital, corruption, real estate mobbing, land grabbing and illegal activities undertaken by land cartels and mafia. These issues negatively impact the efforts of individuals, civil society, and sometimes States themselves to implement the right to adequate housing.

63. Through his communication with States on information received, raising allegations that may reflect denial or violation of the right to adequate housing, the Special Rapporteur has tried to engage in a constructive dialogue. Many States have responded positively and provided information. Others have either not responded to his request for information or have only engaged on non-substantive issues.³⁶ The Special Rapporteur hopes that member States of the Human Rights Council will engage with the mandate on the substance of the allegation, invite the Special Rapporteur to visit their country and seek her/his assistance in moving toward the resolution of specific cases where the right to adequate housing has been, or is likely to be, violated.

64. As an example, the Special Rapporteur, in collaboration with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, has recently taken the initiative to offer assistance to the Government of Mexico, national institutions, affected civil

³⁶ On average, Governments have responded to fewer than one-third of the communications of the Special Rapporteur.

society groups and regional politicians, to address the impact of a large development project on indigenous people.³⁷ The Rapporteur sees this form of assistance as a useful role for mandate holders.

B. Suggested areas of continued focus

1. Access to land

65. In this section, the Special Rapporteur wishes to continue the discussion that he initiated in the last report he presented to the Council regarding the link between land and the right to adequate housing.³⁸

66. In several reports,³⁹ the Special Rapporteur has stressed that land, as a housing resource, is a critical element of the human right to housing. Inadequate housing of the poor is often the consequence of being barred from access to land, credit, and materials with which to build. When access is granted, tenure generally is not. The lack of legal provisions to enable communities to inhabit or own land and to make productive use of natural or common resources should also be noted as creating an obstacle to the implementation of the right to adequate housing.

67. Land constitutes the main asset from which the rural poor are able to derive a livelihood. Of all the private land in the world, however, nearly three quarters is estimated to be controlled by just 2.5 per cent of all landowners. Millions of families, though they toil on the land, do not enjoy ownership rights over it and are considered landless. An average of 71.6 per cent of rural households in Africa, Latin America, and Western and East Asia (excluding China) are landless or near landless.⁴⁰

68. Land also plays a crucial role in the structural linkages between rural and urban housing problems. While migration to urban areas is on the rise, the underlying causes for this movement are not being addressed. Such migration is generally not voluntary, but is the product of extreme rural poverty due to landlessness; land insecurity; land conversions; the loss of means of subsistence resulting from a failure to give priority to agrarian reform or promote rural infrastructure; project-induced displacement; distressed housing; or the industrial takeover of farmland. The lack of legal recognition of the right to land contributes to these situations. In cities, these migrants are often precluded from accessing adequate housing and forced to live in slums and other informal settlements characterized by insecure and inadequate living conditions.

³⁷ A/HRC/7/16/Add.1.

³⁸ A/HRC/4/18.

³⁹ See for instance E/CN.4/2001/51, E/CN.4/2002/59, E/CN.4/2005/48, E/CN.4/2005/43 and E/CN.4/2006/118.

⁴⁰ E/CN.4/2005/48, para. 40.

69. Inequitable land ownership patterns and landlessness give rise to a host of interrelated problems that range from inadequate housing and lack of livelihood options, to poor health, hunger and food insecurity, and acute poverty. The growing control of land by corporate enterprises and the accompanying industrialization of agriculture tend to displace the poor to marginal areas for farming, and threaten social and ecological sustainability.⁴¹ Access to land is also critical for building socio-economic security. Many Governments and donor agencies fail to understand the important role that landlessness often plays in poverty and marginalization. This is evident in the low priority given to land and agrarian reform. This situation has given rise to well-organized movements of landless peasants and rural workers who are bringing agrarian reform to national and international policy debates, often at great personal risk, including to their lives.

70. The failure of States to provide legal security of tenure and to legally recognize the land and housing rights of communities makes them vulnerable to forced evictions. Globally, the trend to evict communities in the name of city beautification, urban renewal, industrialization and development-based activities, including mining or the building of dams and other infrastructures, has been accelerating.

71. In many countries, the control and ownership of land, especially in rural areas, by women is critical to their livelihoods, food security, economic independence and physical security, including of their children. Women, however, own only an estimated 1 to 2 per cent of all titled land worldwide, which is often cited as the result of low levels of inheritance of property by women.⁴²

72. With the growing migration of men to urban areas in search of employment in many countries, it is mainly women who continue to farm in rural areas. This rising “feminization of agriculture” further heightens the importance of guaranteeing women’s land rights.

73. The studies and consultations on women and housing conducted by the Special Rapporteur, including testimonies from women, reveal widespread violation of women’s rights to adequate housing and land.⁴³ On several occasions, the Special Rapporteur has expressed concern regarding the prevalence of 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. Of particular concern is the reflection of discriminatory cultural and social norms in family or personal law, including uncodified laws.

⁴¹ E/CN.4/2005/48.

⁴² Women in Development, Bureau for Global Programs, Field Support and Research and United States Agency for International Development, *Women’s Property and Inheritance Rights: Improving Lives in Changing Times. Final Synthesis and Conference Proceedings Paper* (2003).

⁴³ See E/CN.4/2003/55, E/CN.4/2005/43 and E/CN.4/2006/118.

74. The conceptual and practical linkage between land and other human rights is particularly evident with respect to indigenous peoples. Despite the often sacred relationship with their territories and deep-rooted and historical ties, the land and territories of indigenous populations have frequently been appropriated by others. The failure of States to recognize indigenous and other local communities as rightful stewards or owners of the natural resources they cultivate and manage is symptomatic of the neglect of rights of the rural poor. The systematic denial of ownership and collective land rights makes such communities more vulnerable to forced displacement, thereby threatening their livelihoods. The slow progress in demarcation of indigenous land is an obstacle to the legal recognition of community-based property rights for indigenous peoples.

75. Land is also of great importance to certain groups that have suffered historic discrimination, whether on grounds of descent, race or colour. For instance, descent and work-based communities, such as the Dalits in India, continue to face extreme human rights violations, including with regard to land and housing rights. In Brazil, the Afro-Brazilian communities of *quilombos* (former slave colonies) face discrimination that severely impacts their ability to enjoy the human right to land and adequate housing and force them to the fringes of mainstream society.⁴⁴

76. Lack of access to housing, land and property also impact refugees who are forced to flee their home countries or those who have been internally displaced due to internal conflict or large development projects.

77. Urban and peri-urban areas across the world today are scenes of violations of the right to adequate housing, due to the inability or unwillingness of the authorities to adequately control land and housing speculation and to reverse the concentration of land ownership and hoarding of property. This phenomenon is also spreading to rural areas. The privatization of land often leads to land becoming less affordable, which has particularly affected women-headed households. Unaffordability, as a result of inadequate regulation of housing and land markets by States was identified in numerous mission reports as an important issue.

78. Although there are few international human rights legal provisions on the right to land,⁴⁵ the outcomes of various international conferences, including the Istanbul Declaration on Human Settlements, recognize the relation between land and housing.⁴⁶ The UN-Habitat Agenda commits Governments to providing legal security of tenure and equal access to land to all

⁴⁴ See E/CN.4/2005/48/Add.3.

⁴⁵ Reference can be made to article 14 of the Convention on the Elimination of All Forms of Discrimination against Women or to the United Nations Declaration on the Rights of Indigenous People.

⁴⁶ Available at http://www.unhabitat.org/downloads/docs/2072_61331_ist-dec.pdf.

people, including women and those living in poverty.⁴⁷ The Voluntary Guidelines of the Food and Agriculture Organization of the United Nations (FAO) on the right to adequate food address security of land tenure and the need to enhance access to land in guideline 8B.⁴⁸

2. Rural areas

79. The increasing trend of migration from rural to urban areas, results in the creation of slums and millions of people forced to live in inadequate and insecure housing conditions. The causes of this often involuntary migration are multiple and need to be addressed. People are forced to move to urban areas to earn a living, as well as obtain access to medical services and education. This results from the loss of means of subsistence due to the failure to give priority to agrarian reform, growing landlessness and indebtedness, the failure to promote rural development, displacement induced by large projects, or State and corporate takeover of farmland. While urbanization worldwide is increasing at an alarming rate, over 3 billion people continue to live in rural areas. The absolute number of rural inhabitants in Africa and Asia is projected to increase over the next 30 years.

80. Given the level of poverty and unemployment in rural areas, many of these people live in distressed housing conditions. Extreme poverty is far more prevalent in rural areas, where about 75 per cent of the world's poorest people live and depend on agriculture for their survival.⁴⁹ Thus, a specific focus on rural areas remains essential to improve enjoyment of the right to adequate housing.

3. Natural disasters and humanitarian emergencies

81. Natural disasters result in displacement, loss of housing and livelihood thereby impacting on peoples rights to adequate housing and its congruent rights. Recent natural disasters,⁵⁰ and their aftermath, have demonstrated the need to integrate human rights standards into prevention,

⁴⁷ Available at http://www.unhabitat.org/downloads/docs/1176_6455_The_Habitat_Agenda.pdf, para. 40 (b).

⁴⁸ Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, adopted by the Council of the Food and Agriculture Organization of the United Nations (FAO) in November 2004, available at http://www.fao.org/righttofood/en/highlight_51596en.html.

⁴⁹ "Reducing poverty and hunger: the critical role of financing for food, agriculture and rural development", joint report prepared by FAO, the International Fund for Agricultural Development and the World Food Programme for the International Conference on Financing for Development available at <ftp://ftp.fao.org/docrep/fao/003/y6265e/y6265e.pdf>.

⁵⁰ Including the earthquake in Bam, Iran, in December 2003; the Indian Ocean tsunami in December 2004; the South Asia earthquake in October 2005; Hurricane Katrina in the United States in August 2005; Hurricane Mitch in Nicaragua in October/November 1998; and the earthquake in Peru in August 2007.

relief and rehabilitation efforts. In many of these situations, concerns raised include discrimination, gender insensitivity, lack of participation, and corruption and delay in distribution of aid, compensation and reconstruction work.

82. These situations impact women and children disproportionately, as previously highlighted by the Special Rapporteur.⁵¹ In some cases, compensation is reportedly distributed to heads of household and thus most often to men, while ignoring the equal rights of women over land and housing.

83. The absence of secure title to housing and land complicates access to compensation and rehabilitation, including permanent housing.

84. The Special Rapporteur has asked States and the international community to take necessary steps to relieve the plight of the victims of natural disasters.⁵² He welcomes the operational guidelines on human rights and natural disasters developed by the Inter-Agency Standing Committee (IASC) that aims to assist States in developing policies to support persons affected by natural disasters and to protect their human rights.⁵³ He hopes that these guidelines will be used by all actors who currently rely exclusively on the Sphere guidelines⁵⁴ which the Special Rapporteur finds lacking in a strong human rights, including women's rights, perspective.⁵⁵

4. Climate change

85. Although the current and impending threats posed by climate change are being widely recognized, the human rights impacts need to be urgently addressed by the United Nations human rights system. Climate change has an impact on a range of human rights, including the rights to adequate housing, food and water. Climate change leads to increases in disasters, desertification, drought and loss of livelihood, which in turn increase displacement and force

⁵¹ See for instance E/CN.4/2006/118.

⁵² Such as in the case of Peru (<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/DF6CC2B0B9BBCE03C125733E004DA2FB?opendocument>), Iran (<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/D8A9D156584A8FE3C1256E140058426E?opendocument>), or after the 2004 Tsunami (<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/FE1B362DA1504590C12570DC00599CEA?opendocument>).

⁵³ Inter-Agency Standing Committee, *Protecting Persons Affected by Natural Disasters: IASC Operational Guidelines on Human Rights and Natural Disasters* (2006), available at http://www.humanitarianinfo.org/iasc/content/documents/working/OtherDocs/2006_IASC_NaturalDisasterGuidelines.pdf.

⁵⁴ See Sphere Project: <http://www.sphereproject.org>.

⁵⁵ See also, for example, Asia Pacific Forum on Women, Law and Development (APWLD), *Guidelines for Gender Sensitive Disaster Management*, (2006) available at www.apwld.org.

people and communities into distressed housing and living conditions. Climate change has already affected millions of the world's poorest people and could result in hundreds of millions of people suffering loss of livelihood and permanent displacement.⁵⁶

86. International human rights law imposes several obligations on States that are relevant to addressing human vulnerabilities to climate change, including the obligation to improve access to housing located away from hazardous zones and to safe drinking water.⁵⁷

5. Global challenges

87. Throughout his mandate, the Special Rapporteur has continued to elaborate on linkages between the process of economic globalization and the realization of the right to adequate housing and other relevant rights, and sought to elaborate a research agenda on this topic. With already deteriorating living conditions for the majority of poor communities in cities and rural areas, local authorities and civil society organizations around the world are seeking to provide alternative approaches to development and planning, to protect their most vulnerable citizens from the negative impacts of economic globalization, including privatization processes. Innovative approaches to improving the housing and living conditions of the poor are found in cities implementing participatory budgeting or decentralization of administration and decision-making through democratic processes.⁵⁸ While concerns have been raised in the international community that globalization has exacerbated the current deepening inequality between and within nations, its direct impact on the right to adequate housing - broadly defined to include access to land, as well as other essential services such as water, electricity and sanitation - have yet to be systematically studied or estimated.⁵⁹

88. In today's context of globalization and predominance of the free market economy, there is a trend towards greater competition and market efficiency which often results in increased marginalization of the poor. The Special Rapporteur has examined in a previous report⁶⁰ examples of privatization of water services that negatively affected the poor, concluding that unfettered globalization cannot bring about the fulfilment of economic, social and cultural rights.

⁵⁶ See, inter alia, United Nations Development Programme Human Development Report 2007/2008; and Intergovernmental Panel on Climate Change Fourth Assessment Report, Working Group II Report, "Impacts, Adaptation and Vulnerability", and Synthesis Report.

⁵⁷ "Climate Change and Human Rights", address by the Deputy High Commissioner for Human Rights at the Conference of the Parties to the United Nations Framework Convention on Climate Change and its Kyoto Protocol, available at <http://www.unhchr.ch/hurricane/hurricane.nsf/NewsRoom?OpenFrameSet>.

⁵⁸ See E/CN.4/2003/5.

⁵⁹ See E/CN.4/2002/59.

⁶⁰ E/CN.4/2003/5.

Governments have an important role to play in reconciling macroeconomic policies with social objectives and meeting the needs of the most vulnerable first, keeping in mind the primacy of human rights obligations.⁶¹

89. The Special Rapporteur believes that the severity of the crisis affecting housing and land requires much more global attention and needs to be given priority on the global agenda, including in the United Nations system.

6. Civil society

90. Civil society plays a very important role in the recognition of the right to adequate housing both at national and international level. In a growing number of examples brought to the attention of the Special Rapporteur, civil society seeks to defend and protect the right to adequate housing and land with limited means to challenge corrupt officials and private national and global entities.

91. On many occasions, the Special Rapporteur has witnessed the difficult conditions under which civil society actors defend the right to adequate housing, including the removal of funding from service providers if they are critical of the policies in place, political interference in their work, limitations to their freedom of expression and association, violence and even murder.

92. In this regard, the Special Rapporteur is particularly concerned about increasing reports of violence against human rights defenders protecting the right to housing and land, and against representatives of communities affected by infrastructure projects, mining activities, mega-events and natural disasters.

VI. CONCLUSIONS AND RECOMMENDATIONS

93. **The overall assessment of the Special Rapporteur, after seven years as mandate holder, is that there is a severe and growing global housing and land rights crisis that needs to be given priority on the global agenda and accorded greater attention. In this context, in view of the issues raised in this report and in addition to the recommendations made in all his previous reports,⁶² the Special Rapporteur wishes to present a number of general and specific recommendations addressed to the Human Rights Council, States and the international community.**

General recommendations

94. **States should take immediate measures aimed at conferring legal security of tenure upon those persons, households and communities currently lacking such protection, including all those who do not have formal titles to home and land.**

⁶¹ See E/CN.4/2002/59.

⁶² Annual reports, country reports and reports on women and housing of the Special Rapporteur are available at: <http://www2.ohchr.org/english/issues/housing/index.htm>.

95. **The Special Rapporteur urges States to take concrete measures, including through legislation and other regulatory mechanisms, to counter forced evictions; urban “apartheid” and segregation; land-grabbing; growth of the “land mafia” and land cartels; unbridled property speculation; and indiscriminate escalation of housing prices.**

96. **The Special Rapporteur recommends institutionalizing inter-ministerial coordination so as to ensure that the formulation and implementation of national and global economic policies, such as those in the areas of trade, investment, finance, structural adjustment and debt, do not cause the State to ignore human rights obligations and aggravate living conditions for those people and communities facing discrimination and segregation with regard to housing, land and access to related civic services.**

97. **Legislation at all levels should reflect and effectively implement the rights to information and participation, which are crucial to the realization of the right to adequate housing.**

98. **The Council may wish to express its support for the joint UN-Habitat/OHCHR Housing Rights Programme, emphasizing the need for efforts to combat forced evictions and homelessness, including by inviting States to provide financial support.**

Homelessness

99. **The Special Rapporteur wishes to reiterate the recommendations on homelessness contained in his 2005 annual report,⁶³ in particular the following:**

(a) **States must address holistically the structural causes of homelessness and integrate appropriate and accessible support services, including for health, psychological, social and work-related support, with particular attention to homeless women and children;**

(b) **Laws and policies should recognize that homeless people have a justiciable right to adequate housing, and should not criminalize the homeless.**

Forced evictions

100. **In his thematic report on forced evictions,⁶⁴ the Special Rapporteur made a number of recommendations. In addition, the Special Rapporteur:**

(a) **Urges States, donors, international and regional financial institutions and private investors not to engage, whether directly or indirectly, in projects that may result, through forced evictions, in the violation of the right to adequate housing of individuals or communities;**

⁶³ E/CN.4/2005/48.

⁶⁴ E/CN.4/2004/48.

(b) Recommends States, in view of the growing incidence of forced evictions worldwide, to incorporate the Basic principles and guidelines on development-based evictions and displacement⁶⁵ into national laws and policies governing housing and land issues, including resettlement policies, and encourages States to invite the Special Rapporteur to observe their practical application at the country level;

(c) Recommends the Council to ensure wide dissemination of the Basic principles and guidelines and inclusion of the issue of development and market-induced displacements and evictions in the elaboration of mandates of relevant special procedures of the Council, in particular on the rights of indigenous peoples, internally displaced persons, violence against women, and the right to food;

(d) Strongly recommends the further elaboration of assessments of the impact of evictions, on the basis of these principles and guidelines. Such assessments need to include both material and non-material losses. Reference can be made in this task to the “loss matrix” developed by the Special Rapporteur in collaboration with civil society.⁶⁶

Discrimination

101. The Special Rapporteur reiterates the recommendations contained in his 2002 report,⁶⁷ in particular to assist in the follow-up to recommendations and commitments made at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and urges that:

(a) Legislative measures that prohibit racial and other discrimination in all areas of housing be enacted or strengthened;

(b) Policies, programmes, and budgetary and financial allocations promote equal access to civic services essential to the realization of the right to adequate housing, including potable water, electricity and sanitation, and that policies that result in discriminatory access are reversed;

(c) Policies and laws are formulated to address multiple discrimination facing minority, indigenous and low-income communities in their struggle to exercise their right to adequate housing and land.

The human right to water and sanitation

102. In view of the importance of developing further analytical, investigative and monitoring work on water and sanitation, the Special Rapporteur:

⁶⁵ Contained in A/HRC/4/18, annex I.

⁶⁶ See the Housing and Land Rights Network toolkit at: <http://toolkit.hlrn.org>.

⁶⁷ E/CN.4/2002/59.

(a) Urges States to take into account the contents of the general comment of the Committee on Economic, Social and Cultural Rights on the right to water⁶⁸ and, in accordance with Commission on Human Rights resolution 2002/21, to give full effect to housing rights including the right to water, giving particular attention to women, children, communities that have been historically discriminated against and marginalized, and those living in extreme poverty;

(b) Also urges States to guarantee universal access to basic human rights to water, sanitation and other essential services including electricity, and to exercise the utmost caution when contemplating policies that would lead to the privatization of water, sanitation, and electricity services;

(c) Invites the Council to consider appointing a Special Rapporteur on the right to water and sanitation.

Affordability

103. **Given that the issue of affordability of housing will most probably worsen in the coming years, resulting in increased denial of the right to adequate housing, the Special Rapporteur calls upon the Human Rights Council to propose a human rights approach to this problem including through:**

(a) Urging States to devote particular attention to the question of ensuring, where possible, progressive increases in budgetary allocation to housing;

(b) Requesting States to increase the availability of social housing and reversing any policies that lead to the reduction of housing subsidies for low-income groups;

(c) Urging States to adopt appropriate measures to regulate public and private rental markets and the mortgage market, so that no household has to pay more than 30 per cent of its income for housing, as higher housing costs can compromise enjoyment of other basic human rights such as health, food, education and clothing.

Access to land

104. **On many occasions, the Special Rapporteur has drawn the attention of the Council to the unfinished agenda of recognizing the linkage between access to land and human rights. Therefore, the Council should:**

(a) Reaffirm the right to equal and non-discriminatory access to land and recognize that in many circumstances meeting human rights obligations will require improving access to land, particularly for the rural poor in developing countries;

⁶⁸ General comment No. 15 (2002) on the right to water (articles 11 and 12 of the Covenant).

(b) Consider the relationship between the right to land and congruent human rights and their implementation, in particular in regard to adequate housing and the right to food and work as a means to combat poverty, discrimination, violence, evictions and displacement;

(c) Consider holding an expert seminar to develop strategies for the legal recognition of land as a human right, including the protection of individual and collective land rights of indigenous peoples, peasants, the landless and other groups that are dependent on and derive their identity and livelihood from land and land-based resources;

(d) Request States to give priority to agrarian and land reform in rural areas and to improving equal access to land and wealth in both urban and rural areas.

Rural areas

105. As the Special Rapporteur has pointed out since the inception of the mandate, there is a growing neglect of the human rights of rural populations and the development of rural areas. It is therefore imperative that:

(a) States collaborate with international and regional development agencies, donors and civil society to develop integrated rural development strategies, with policies and programmes that have the aim of sustaining rural livelihoods, with a focus on rural employment generation and local infrastructure development;

(b) States and international organizations take steps to ensure that rural development, including of remote areas and in cooperation with local communities, is integrated with national housing policy and strategy, and that improvement in housing and living conditions (including water and sanitation) is linked with employment and education opportunities.

Natural disasters and humanitarian emergencies

106. In regard to natural disasters, humanitarian emergencies and post-disaster reconstruction, the Special Rapporteur:

(a) Recommends that the Council consider promoting disaster preparedness and relief and rehabilitation as essential to the enjoyment of human rights;

(b) Urges that international human rights standards and principles be incorporated into all relief and rehabilitation efforts, including those of the international community, international financial institutions and non-governmental organizations, in order to facilitate the speedy transition from temporary shelter to permanent housing for those affected;

(c) Urges States to ensure implementation of the rights to information and participation and to seek the prior informed consent of victims or beneficiaries in all stages of relief and rehabilitation, including the provision of shelters and permanent housing;

(d) Urges States to ensure that relief and rehabilitation efforts are gender-sensitive and culturally appropriate.

Women and adequate housing

107. The Human Rights Council must continue to focus on and promote women's rights to adequate housing, land, property and inheritance. The Special Rapporteur has in his three reports on this issue made a number of recommendations. In addition, he:

(a) Urges States to guarantee women's legal security of tenure over housing and land, including the recognition of women's equal rights to housing, property and land;

(b) Recommends that the Council reflect on the need for a Special Rapporteur on laws that discriminate against women and continue mainstreaming gender and women's rights in its work;⁶⁹

(c) Requests more collaborative work between special procedures mandate holders in this regard, including expanding the work on the link between women's right to adequate housing and the violence they face in and around the home;

(d) Urges the Council and the next Special Rapporteur on adequate housing to continue focusing on women and housing, including by: (a) further analysis and recommendations on the policy implications of an intersectional approach; (b) formulating strategies, in collaboration with States and civil society, to close the increasing gap between recognition and implementation of women's rights to housing and land; and (c) continuing collaborative work with the Committee on the Elimination of Discrimination against Women towards a general recommendation on women's right to adequate housing and land.

Children and adequate housing

108. The Special Rapporteur calls upon all States and concerned parties to address the deteriorating global state of housing and homelessness of children around the world and make it a priority concern requiring urgent action. He recommends that the Council:

(a) Urge the next Special Rapporteur on adequate housing to continue close collaboration with the Committee on the Rights of the Child, in particular in view of the possible preparation of a general comment which may address issues such as the link between violence and the child's right to adequate housing, the safety of children at home, and the impact of evictions on children;

⁶⁹ As discussed at the sixth session of the Human Rights Council. See discussion on integrating a gender perspective in the work of the Council, (A/HRC/6/SR.12).

(b) Request the next Special Rapporteur on adequate housing to analyse the impact of inadequate housing on children and their human rights, and establish specific recommendations in this regard, including policy measures to mitigate the psychological impact of evictions and other violations of the right to adequate housing on children.

Indigenous peoples and adequate housing

109. The Special Rapporteur urges States to:

(a) Ensure the right to adequate housing for indigenous peoples, respecting their particular cultural housing and land needs;

(b) Recognize the historical rights that indigenous people have over their homes and territories;

(c) Assure indigenous peoples a real participatory role in and control over, to the greatest extent possible, their affairs, including management, use and ownership of their natural resources;

110. In addition, the Special Rapporteur believes that particular attention should be given by the United Nations to indigenous peoples living in rural areas, and the inadequate living and housing conditions forcing them into urban areas, as well as the housing, living conditions, evictions and discrimination that they face in urban areas.

Groups requiring special attention

111. The Human Rights Council must urge States to ensure that their national housing policies guarantee the provision of housing and proper support services to address the requirements of disadvantaged groups, including persons living with psychosocial and other disabilities.

112. In addition, States should adopt specific legal provisions and programmes to eliminate barriers to physical accessibility in existing structures and make compulsory the elimination of these barriers in all new construction, as required by the new Convention on the Rights of Persons with Disabilities.

Civil society

113. Given the critical role played by civil society in all aspects of advocacy, analysis, monitoring and implementation of the right to adequate housing, the Special Rapporteur calls upon the Human Rights Council to:

(a) Closely monitor the situation of human rights defenders and representatives of victims of housing and land rights violations, and take the necessary measures to ensure that claims for adequate housing and land are not criminalized;

(b) Acknowledge the critical nature of the work being undertaken by campaigns and movements on housing and land rights and, given the increased stress under which civil society actors operate, ensure that sufficient spaces are made available for meaningful dialogue with civil society and those directly affected by violations of the right to adequate housing.

Monitoring implementation of the right to adequate housing

114. As the Special Rapporteur has emphasized on many occasions, it is of the utmost importance that implementation of the right to adequate housing is objectively evaluated. In this context, he:

(a) Urges States to adopt indicators and statistics on adequate housing⁷⁰ and establish national benchmarks consistent with their human rights obligations, organize follow-up initiatives at country level and undertake further collaboration with OHCHR and UN-Habitat on indicators on the right to adequate housing;

(b) Urges States, in collaboration with the next mandate holder, OHCHR and UN-Habitat, to review the questionnaires developed by the Special Rapporteur (on the right to adequate housing, and on women and housing), with a view to including new issues in such monitoring tools;

(c) Urges United Nations agencies and field presences to play a much more active role in monitoring implementation of the right to adequate housing and supporting States in their consideration of the recommendations of treaty bodies and Special Rapporteurs.

Collaboration

115. The Special Rapporteur believes that collaborative work between mandate holders and between different parts of the United Nations human rights system is crucial and should be strengthened. The support of the Council is critical in this respect. The Council may wish to:

(a) Request the next mandate holder on adequate housing to work with all relevant mandate holders through joint missions, communications and other initiatives to reinforce, inter alia, the indivisibility of all human rights and their linkage with the right to adequate housing;

(b) Urge the next mandate holder to continue the dialogue with all relevant treaty bodies, including initiating work on relevant matters with the Human Rights Committee and the Committee against Torture.

⁷⁰ Such as those contained in A/HRC/4/18, annex II.