



**ГЕНЕРАЛЬНАЯ АССАМБЛЕЯ**

Distr.  
GENERAL

A/HRC/4/18/Add.2  
11 May 2007

RUSSIAN  
Original: ENGLISH

**СОВЕТ ПО ПРАВАМ ЧЕЛОВЕКА**

Четвертая сессия\*

Пункт 2 предварительной повестки дня

**ОСУЩЕСТВЛЕНИЕ РЕЗОЛЮЦИИ 60/251 ГЕНЕРАЛЬНОЙ АССАМБЛЕИ  
ОТ 15 МАРТА 2006 ГОДА, ОЗАГЛАВЛЕННОЙ  
"СОВЕТ ПО ПРАВАМ ЧЕЛОВЕКА"**

**Доклад Специального докладчика по вопросу о достаточном жилище как  
компоненте права на достаточный жизненный уровень Милуна Котари**

**ПОЕЗДКА В АВСТРАЛИЮ\*\*  
(31 июля - 15 августа 2006 года)**

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## Резюме

Цель поездки в Австралию Специального докладчика по вопросу о достаточном жилище как компоненте права на достаточный уровень жизни Милуна Котари в Австралию заключалась в том, чтобы изучить положение в области реализации права на достаточное жилище при уделении особого внимания обеспечению права на достаточное жилище для таких конкретных групп, как коренные народы или женщины, а также изучить соответствующие программы и политику, направленные на защиту связанных с его мандатом прав человека.

Специальный докладчик выражает признательность правительству Австралии за приглашение осуществить такую поездку. Отмечая эффективную практику, которую правительство применяет для решения некоторых проблем, связанных с осуществлением права на достаточное жилище, он в то же время в ходе визита и консультаций испытывал обеспокоенность по поводу ситуации, свидетелем которой он являлся, в особенности в некоторых частях страны и применительно к некоторым конкретным группам населения. Он пришел к выводу о том, что в Австралии происходит серьезный общенациональный жилищный кризис, несмотря на то, что она является одной из наиболее богатых развитых стран с относительно немногочисленным населением. Этот кризис затрагивает многие группы населения и, хотя он оказывает серьезное непосредственное воздействие на большинство уязвимых групп населения, он также имеет последствия и для других слоев австралийского общества, в особенности для хозяйств с низкими доходами и, во все большей степени, для хозяйств со средними доходами.

Специальный докладчик отмечает, что в Австралии не имеется четко сформулированной последовательной долгосрочной и всеобъемлющей жилищной стратегии. В стране не имеется общенациональной законодательной и политической базы, по сравнению с которой можно проводить оценку результатов правительственных программ и стратегий для определения того, в какой степени правительства продвигаются вперед в деле реализации права человека на достаточное жилище для всех. Существующие показатели из различных источников указывают на регрессивные тенденции: сокращение государственного жилищного фонда, резкий рост арендной платы за частное жилье, признанный кризис наличия доступного по средствам жилья и отсутствие реального сокращения числа бездомных. Следует четко включить права человека и право на достаточное жилище в австралийское законодательство, и следует в полной мере обеспечить осуществление рекомендаций по вопросам жилья или землепользования, которые были высказаны в адрес австралийских органов власти различными органами Организации Объединенных Наций по правам человека.

В свете многочисленных проблем, изложенных в его докладе, Специальный докладчик пришел к выводу о том, что Австралия не смогла осуществить право человека на достаточное жилище. Он призывает правительство сделать обеспечение жилищем одним из национальных приоритетов, используя всеобъемлющую и скоординированную национальную жилищную политику, основанную на правозащитном подходе и предусматривающую в качестве первоочередной задачи удовлетворение потребностей наиболее уязвимых групп. Он также представил в своих заключениях перечень подробных рекомендаций, которые включают необходимость создания на федеральном уровне министерства, которое занималось бы исключительно жилищным хозяйством, необходимость создания национального органа, который поистине представлял бы мнение коренных народов, и принятие активных мер в целях решения проблем, связанных с финансовой доступностью жилья и со спекуляцией жильем и землями, которые широко распространены на всей территории страны.

## Annex

### REPORT OF THE SPECIAL RAPPORTEUR ON ADEQUATE HOUSING AS A COMPONENT OF THE RIGHT TO AN ADEQUATE STANDARD OF LIVING: MISSION TO AUSTRALIA (31 JULY TO 15 AUGUST 2006)

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## **Introduction**

1. At the invitation of the Government of Australia, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, visited Australia from 31 July to 15 August 2006.
2. During his visit, the Special Rapporteur visited the cities of Canberra, Sydney, Brisbane, Darwin, Alice Springs, Adelaide and Melbourne. He visited communities in rural areas such as Lightning Ridge (New South Wales, NSW), Kuranda, Kowrowa, Mantaka, and Mona Mona (Northern Queensland), the Palmerston Indigenous Village (Darwin; Northern Territory, NT), Ilparpa, Irrkerlanntye and Lytentye Apurte-Santa Teresa (Alice Springs, NT), and Bendigo (Victoria), as well as an immigration detention centre in Villawood, near Sydney.
3. The Special Rapporteur met with the Commonwealth authorities in Canberra. At the state/territory level, he met with the housing authorities, including Minister Weatherall in Adelaide and Minister Hargreaves in the Australian Capital Territory (ACT). A meeting was also held in Sydney with the Aboriginal and Torres Islander Social Justice Commissioner, Tom Calma. He also held meetings with various parliamentarians, such as Senator Andrew Bartlett, Senator Rachel Siewert, Senator Kim Carr, and other personalities, including Professor Mick Dodson and Mr. Hugh Stretton.
4. The Special Rapporteur also met with a large number of representatives of the civil society, including social workers, support services, academics, women's groups and indigenous representatives. Throughout his mission, he took testimonies from people directly affected by the shortcoming in the implementation of the human right to an adequate housing, including indigenous peoples, women, persons experiencing homelessness, and those suffering domestic violence and discrimination in accessing housing.
5. The Special Rapporteur appreciates the extensive efforts made by civil society groups in all states, and was very impressed by the level of competence and dedication of these women and men to cope with the numerous problems of Australian society despite the increasing stress under which they are working.

## **I. LEGAL-INSTITUTIONAL FRAMEWORK AND MAIN HOUSING POLICIES/CHARACTERISTICS**

### **A. Australia's government structure**

6. Australia is a federal State and has various levels of authority: Commonwealth, state, territory and local. The Commonwealth, or federal, Government, passes laws which affect the whole territory on a number of issues defined in section 51 of the Constitution. State governments have their own constitutions, an independent structure of legislature, executive and judiciary, and retain legislative power over a large number of matters that occur within their borders. The wording of the law has often created conflicting situations where both levels of government claim the authority to legislate over or deny responsibility for the same matter, such as with housing.

7. Ten territories lie outside the six states. Seven are governed only by Commonwealth law, usually through a Commonwealth-appointed Administrator.<sup>1</sup> Three are Self-Governing Territories,<sup>2</sup> two of which have representation in the Federal Parliament (Northern Territory and ACT). The six states and the NT have established one further level of government: the local governments, also known as local councils. These handle community needs such as waste collection, public recreation facilities and town planning. The state/territory government defines the powers of the local governments, and decides what geographical areas these governments are responsible for.

## **B. Australia and human rights instruments and procedures**

8. Under the Australian Constitution, the power to make and ratify treaties is given to the executive, while the power to legislate is given to the houses of parliament. Therefore, the international human rights treaties ratified by the Australian federal Government are not automatically incorporated into domestic law and are not self-executing. It is for the parliament to incorporate Australia's human rights obligations into the domestic legal order.

9. Australia is party to six of the seven major international human rights instruments<sup>3</sup> and has acceded to the first Optional Protocol to the CCPR and ratified the two Optional Protocols to CRC on the involvement of children in armed conflict, and on the sale of children, child prostitution and child pornography. Australia recognized the complaints process under CAT and CERD in 1993.

10. The process of transcription of international legal obligations into Australian domestic law is incomplete. There is no rights-based approach in the Government's planning and procedures. There is an absence of an overall rights-based framework, such as a Bill of Rights.

11. Only two jurisdictions, ACT and Victoria, have approved human rights charters. Yet, and despite the consistent demand of the civil society, economic, social and cultural rights, including the right to adequate housing, are not included in the human rights covered by these instruments.

12. The Human Rights and Equal Opportunity Commission is Australia's national human rights institution and was established in 1986. It has responsibilities for inquiring into alleged infringements under five anti-discrimination laws - the Racial Discrimination Act 1975, the Sex

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<sup>1</sup> These seven territories are Ashmore and Cartier Islands, Australian Antarctic Territory, Christmas Island, Cocos (Keeling) Islands, Coral Sea Islands, Jervis Bay Territory, Territory of Heard Island and McDonald Islands.

<sup>2</sup> Two mainland territories - the Australian Capital Territory (ACT) and the Northern Territory (NT) - and one offshore territory, Norfolk Island.

<sup>3</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights (CCPR), the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC).

Discrimination Act 1984, the Disability Discrimination Act 1992 and the Age Discrimination Act 2004, as well as inquiring into alleged infringements of specified human rights under the Human Rights and Equal Opportunity Commission Act 1986 (HREOC Act). HREOC specifically omits human rights as defined under the ICESCR and therefore has no specific mandate to investigate complaints in relation to breaches of economic, social or cultural rights.<sup>4</sup>

13. In addition, the Aboriginal and Torres Strait Islander Social Justice Commissioner has specific functions under the HREOC Act and under the Native Title Act, 1993. These functions relate to the monitoring of the enjoyment or otherwise by indigenous people of their rights under the law.

14. Each state/territory has passed anti-discrimination laws that typically prohibit discrimination on specified grounds such as race, sex, and disability in particular areas of activity such as employment, and provision of goods and services, including housing.<sup>5</sup>

15. From a review of existing legislation, case law and gaps in implementation it is clear that Australians do not have a justiciable right to adequate housing as it is defined in international law.<sup>6</sup> To date there has been no major case before Australian courts that has considered the right to adequate housing, nor has the right been argued in cases involving homelessness.<sup>7</sup>

### **C. Legislation related to housing**

16. Although the Housing Assistance Act 1996 aims to assist people to obtain access to housing that is affordable and appropriate to their needs, and to provide assistance for other housing-related purposes, there appears to be a lack of complaint mechanisms for alleged violations of housing rights.

17. All states/territories have residential tenancy legislation, which mediates the relationship between landlord and tenant, defining the circumstances under which an eviction can be initiated, and prescribing the processes for achieving possession of vacancies. There are both

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<sup>4</sup> The ICESCR, in fact, is not annexed to the Human Rights and Equal Opportunity Commission Act 1986.

<sup>5</sup> See Discrimination Act 1991 (ACT); Anti-Discrimination Act 1977 (NSW); Anti-Discrimination Act 1966 (NT); Anti-Discrimination Act 1991 (Queensland); Equal Opportunity Act 1984 (SA); Anti-Discrimination Act 1998 (Tasmania); Equal Opportunity Act 1995 (Victoria); and Equal Opportunity Act 1984 (WA).

<sup>6</sup> See concluding observations of the CESCR: Australia, 1 September 2000 (E/C.12/1/Add.50).

<sup>7</sup> See Nichololson and McCrae “No place like home: homelessness in Australia and the right to adequate housing”, *Australian Journal of Human Rights* 48. vol. 10, 2, 2004.



substantial commonalities and significant differences across jurisdictions.<sup>8</sup> However, there is no national policy approach to tenancy laws. In most states/territories these allow landlords to freely evict tenants, or increase rents requiring the tenant to take formal remedial action to prove such an increase is excessive. Legislation provides only minimal protection from inadequate accommodation standards. Only Queensland, South Australia and Victoria have laws that provide boarders and lodgers with basic tenancy rights.<sup>9</sup> Complaints under the tenancy law are dealt with by specific judicial organs, such as the Consumer, Tenancy and Trader Tribunal in NSW.

18. In August 2000, the Committee on Economic, Social and Cultural Rights expressed concern about the lack of protection against eviction and unfair rent increases, which was an increasing problem, particularly in urban centres which are experiencing very low rental property vacancy rates with intense competition.<sup>10</sup> The Committee recommended the creation of a National Housing Strategy for states/territories, establishing consistent housing policies that progressively implement the right to adequate housing. However, this has not yet been implemented.

#### **D. Characteristics of housing**

19. Each state/territory has its own housing policies. The responsibility is shared with the Commonwealth, particularly through the Commonwealth State Housing Agreement. (Description and comments on various housing policies and related policies are included in the appendix to the present report.)

##### **1. The homeownership model**

20. Although the trend seems to be evolving recently, Australians have traditionally favoured homeownership. Approximately 70 per cent of Australians are homeowners. In 2001 this figure ranged from 75.3 per cent in Victoria to 69.1 per cent in NSW, 66.6 per cent in Queensland, and 47.1 per cent in the NT.<sup>11</sup>

21. Australian authorities have supported the homeownership model by tax incentives, first homeownership grants and other financial means.

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<sup>8</sup> For example, Queensland has a Residential Tenancy Act of 1994 (<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/R/ResidTenA94.pdf>), a Residential Services (Accommodation) Act 2002 ([http://www.rta.qld.gov.au/zone\\_files/Residential\\_Services/coverage.pdf](http://www.rta.qld.gov.au/zone_files/Residential_Services/coverage.pdf)), and a Regulating private tenancy database of 2003.

<sup>9</sup> Peter Alexander, "Great expectations: in pursuit of legislative reform for boarders in NSW", *Parity*, February 2004, p. 77.

<sup>10</sup> Concluding observations of the CESCR on Australia, 1 September 2000 (E/C.12/1/Add.50), para. 21.

<sup>11</sup> Australian Housing Market: Statistical Update - June 2003 (see <http://www.facs.gov.au/internet/facsinternet.nsf/aboutfacs/programs/house-austhousingmarket.htm>).

22. The proportion of homeownership is inversed when it comes to indigenous communities. The NATSISS 2002 reported that 70 per cent of indigenous respondents lived in rented accommodation, which had not changed significantly since 1994 (71 per cent). There has, however, been an apparent decline in the proportion of indigenous respondents living in accommodation rented from state/territory housing authorities, from 33 per cent in 1994 to 22 per cent in 2002. Proportionally more respondents (about two thirds in rental accommodation in 2002) are now living in accommodation rented through Indigenous Community Housing Organisations (ICHOs), community housing or other private rental providers (up from one half in 1994).<sup>12</sup>

## **2. Affordability and “housing stress”**

23. According to recent estimates, around 1.5 million Australians are living in housing they cannot afford. Over the last decade average house prices have risen by around 100 per cent while average mortgages are 50 per cent (or Australian \$500 per month<sup>13</sup>) higher. While increasing property values provide homeowners with some comfort, interest rate hikes are making housing less affordable and debt servicing less sustainable for many.<sup>14</sup>

24. Australia’s capital cities are among the least affordable places to live in according to a recent international housing affordability survey,<sup>15</sup> which ranked about 100 cities in Australia, Canada, New Zealand, the United States of America, the United Kingdom of Great Britain and Northern Ireland, and Ireland. While it concluded that the most severely unaffordable housing could be found in cities in the United States, it argued that Australia had “the most pervasive housing affordability crisis”. Sydney, Hobart and Adelaide were ranked the most unaffordable housing markets.

25. Evidently, affordability has a wide impact on various issues, including the demand for affordable and public housing, and the income disparity due to the reduction of households that can afford to buy their houses.

26. The Government accepts that housing is not affordable when the cost of housing exceeds 30 per cent of household income for those in the lowest two income quintiles. The Australian Institute of Health and Welfare (AIHW) stated that, in 2004, 1.7 million people were in “housing stress”, meaning that their housing costs were so great relative to their income so as to jeopardize their ability to meet other basic needs, spending more than 30 per cent of their

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<sup>12</sup> For a statistical overview of Aboriginal and Torres Strait Islander peoples in Australia, see [http://www.hreoc.gov.au/Social\\_Justice/statistics/index.html](http://www.hreoc.gov.au/Social_Justice/statistics/index.html).

<sup>13</sup> All monetary references are in Australian dollars (A\$).

<sup>14</sup> John Spoehr, “Waking up to a great Australian nightmare”, Australian Institute for Social Research, University of Adelaide, 16 June 2006.

<sup>15</sup> The 2nd Annual Demographia International Housing Affordability Survey 2006, Ratings for All Major Urban Markets.

income on accommodation.<sup>16</sup> The most recent report from AIHW confirms that “finding affordable, secure and appropriate housing is a major problem for lower-income Australian households. This problem has been increasing in size and depth and is now affecting moderate as well as low-income households”.<sup>17</sup>

27. It is estimated that up to 35 per cent of low-income people experience “housing stress”, while almost 10 per cent experience “extreme housing stress” meaning that they are required to spend more than 50 per cent of their income on rent to avoid homelessness.<sup>18</sup>

28. In the past 10 years, funding for public housing under the Commonwealth - State Housing Agreement has been reduced by 54 per cent.<sup>19</sup> There is also some funding for supported accommodation services, such as that for refugees. The federal Government’s Commonwealth Rent Assistance (CRA) programme provides money to people on pensions to help cover the cost of renting privately. Increasing reliance has been placed on this subsidy to assist people rather than have them depend on public housing. However, CRA is not available to students over 25 receiving Austudy benefits, or people on low wages below the eligibility level for the base Family Tax Benefit, and does not take into account the higher rents in city areas.<sup>20</sup>

29. According to a study conducted by the Organization for Economic Cooperation and Development (OECD), out of 15 developed countries’ data that was analysed, Australia had the highest prices relative to rental levels, the third-highest prices relative to incomes, and the fourth-highest levels of household debt relative to incomes.<sup>21</sup>

### **3. Public and private housing**

30. Compounding the housing affordability crisis is the absolute decline in the availability of low-cost rental housing in both public and private sectors. One of the major contributors to

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<sup>16</sup> *The Age*, “House prices ‘world highest’”, 1 December 2005; see <http://www.theage.com.au/news/national/house-prices-world-highest/2005/11/30/1133311106610.ht>.

<sup>17</sup> See “Australia’s Welfare Report 2005” at <http://www.aihw.gov.au/publications/aus/aw05/aw05-c06.rtf>.

<sup>18</sup> Senate Community Affairs References Committee, “A hand up not a hand out: renewing the fight against poverty” (2004), pp. 123-4. More than one third (330,360) of Rent Assistance recipients spend more than 30 per cent of their income on rent, with 85,000 spending more than 50 per cent on rent (Public Interest Advocacy Centre (PIAC), Fact Sheet 8: Housing Rights, [www.piac.asn.au](http://www.piac.asn.au)).

<sup>19</sup> Public Interest Advocacy Centre (PIAC), Fact Sheet 8: Housing Rights, [www.piac.asn.au](http://www.piac.asn.au).

<sup>20</sup> National Shelter and Australian Council for Social Service, “Rent Assistance: does it deliver affordability?”, September 2003.

<sup>21</sup> OECD, *Economic Outlook No 78*, Chapter 3, Recent house price developments: the role of fundamentals, 8 December 2005, <http://www.oecd.org/dataoecd/40/6/35816576.pdf>.

this is the decline in Australia's public housing stock, driven by the federal, state and territories governments' declining financial support. There were about 30,000 fewer houses in the public housing stock between 1996 and 2004.<sup>22</sup> Although public housing has decreased over the years, the demand has steadily increased. Numerous concerns have been expressed on the lengthy waiting lists (even in urgent applications where the applicant falls within the primary homeless category) and the conditions of public housing, including safety and security.

31. Social housing constitutes only a small and diminishing part of the market. For example in Victoria, it only represents 4 per cent of the market. Whilst originally social housing was designed for blue-collar workers, it has shifted now to address the needs of low-income and disadvantaged groups.

32. Public housing authorities are increasingly using short-term fixed leases, arguing that, by ending "life tenancy", greater turnover will permit more people to benefit from social housing. For example, in NSW, the government has introduced three different tenure contracts for public housing: 2 years for people in need of transitional accommodation, 5 years for people whose needs may escalate or diminish in that period and 10 years for people with ongoing needs that may intensify. In the NT, public housing tenants may only be offered an initial 3-month tenancy if they are unable to provide written references.

33. The waiting lists for public housing are very long and waiting periods can be up to 10 years, depending on the level of priority of the households according to state criteria. Priority groups are determined differently from state to state.<sup>23</sup> It is reported that criteria are becoming more and more stringent to accommodate the growing demands and the diminishing level of social housing stock. For example, in the NT, a tenant evicted from public housing for breach of an "acceptable behaviour agreement" is not eligible to be placed on the waiting list for two years, even if the person is homeless.

34. There is an overall shortage of supply of low-cost private rental housing. The supply of private rental dwellings has focused towards the high-end market.<sup>24</sup> Also, as confirmed by AHURI, between 1996 and 2001 there was an absolute decline in the total number of dwellings that rented in the bottom four fifths of the rent distribution.<sup>25</sup>

### **E. Good practices**

35. The Special Rapporteur received information on the programmes and initiatives at Commonwealth and state level that seek to tackle the issue of adequate housing accessible to all.

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<sup>22</sup> See <http://www.aihw.gov.au/publications/aus/aw05/aw05-x01.rtf>.

<sup>23</sup> In Brisbane, the public housing average allocation time has been steadily increasing in the past years: 1.80 years for 2004, 2.18 for 2005 and 2.43 for 2006 (Department of Housing, as of 30 June 2006).

<sup>24</sup> See <http://www.aihw.gov.au/publications/aus/aw05/aw05-c06.rtf>.

<sup>25</sup> Changes in the supply of and need for low rent dwellings in the private rental market, AHURI, 2004 ([http://www.ahuri.edu.au/publications/download/60190\\_pp](http://www.ahuri.edu.au/publications/download/60190_pp)).

He 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 to work with. He also noted good practices, such as the Supported Accommodation Assistance Program (SAAP)<sup>26</sup> and the “fixing houses for better health” projects, as well as the positive collaboration between housing authorities, the Ombudsman office and the Equal Opportunity Commission in Victoria. He recognized the positive aspects of internal review mechanism in states’ housing departments, such as in Victoria.

36. In Adelaide, the Special Rapporteur was informed of some initiatives to support tenants at risk of eviction, of active engagement with people “sleeping rough” and of work with homeless people to find accommodation and cover other needs. Compared to other states, South Australia and Victoria also seem to provide more intermediary and transitional solutions for people in need of housing.

37. Some states have initiated serious efforts to address the situation of homelessness. For example, Victoria’s homelessness service system contains over half of all crisis and transitional accommodation in Australia (3,804 properties out of the Australian total of 7,049).

## **II. ISSUES AND AREAS OF PARTICULAR CONCERN**

### **A. Homelessness**

38. The Australian Bureau of Statistics identifies three categories of homelessness.<sup>27</sup> “Primary homelessness” refers to people without conventional accommodation, including those living on the streets, sleeping in parks, squatting in derelict buildings, or using cars or railway carriages for temporary shelter. “Secondary homelessness” refers to those moving frequently from one form of temporary shelter to another, including people using emergency accommodation, people residing temporarily with other households and those using boarding houses on a short-term basis. “Tertiary homelessness” refers to people who live in boarding houses on a medium- to long-term basis. Boarding houses do not have a separate bedroom and living room, do not have kitchen and bathroom facilities of their own, and do not have security of tenure provided by a lease.

39. An additional category is constituted by people in housing situations close to the minimum standards. This includes people renting caravans on a medium- to long-term basis where no one in the caravan has a full-time job. This is particularly the case in rural and remote locations, where caravan parks are among the only forms of transitional or refuge accommodation available in rural and remote areas. The homeless populations in caravan parks are reportedly increasing. A number of large-scale evictions of people from parks to make way for property developments have been reported.

40. On census night in 2001 there were at least 100,000 homeless people: 78 per cent of whom were single, 13 per cent couples and 9 per cent families (including 13,401 children). Overall,

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<sup>26</sup> See Annex 2.

<sup>27</sup> Chamberlain, C. and MacKenzie, D., 2003, “Counting the homeless: 2001”, Australian Bureau of Statistics, Catalogue No. 2050.0.

42 per cent were women, and almost half (46 per cent) were under 25 years of age; 26 per cent were between 12 and 18, and 10 per cent were children under 12.<sup>28</sup> However, the new census, which took place during the visit of the Special Rapporteur, may bring new information on this phenomenon. Preliminary indications point to the fact that the number of homeless people may be underestimated.<sup>29</sup>

41. In 2004-2005, the Supported Accommodation Assistance Program (SAAP) provided support to 157,200 homeless people: 100,400 were adults or unaccompanied children, and 56,800 were accompanying children. The Australian Health Welfare Institute report indicates that one in two people who tried to access SAAP services were turned away and three out of four children were not able to access SAAP accommodation upon request.

42. A transitory and insecure life leads to numerous forms of other disadvantage, including social isolation, poor mental health, increased exposure to crime, greater vulnerability to being a victim of crime, lack of employment opportunities, and persistent stigmatization and discrimination.

43. According to non-governmental organizations, indigenous people are more likely to experience homelessness than non-indigenous. While indigenous people make up 2 per cent of the total Australian population, it is estimated that they make up at least 9 per cent of the total homeless population, 19 per cent of people in improvised housing, and 11 per cent of the clients of supported accommodation services.

44. Numerous testimonies were given to the Special Rapporteur of long-term homeless situations and the lack of possibilities to end the cycle of homelessness. It should be noted that, because of lack of options, in some cases transitional accommodations tend to become permanent structures and subsequently de facto inadequate housing structures. This was witnessed by the Special Rapporteur in camps and caravan parks.<sup>30</sup>

45. On many occasions, it was reported to the Special Rapporteur that shelters, refuges and safe houses do not have the capacity necessary to cope with demand and had to turn people down. Similarly, the lack of transitional accommodations for families, couples or single parents with adolescent children was noted.

46. Homelessness often combines with other forms of vulnerabilities such as age, gender, family violence, disabilities or mental and health issues.<sup>31</sup> The reasons for the continued prevalence of homelessness in Australia vary from the persistence of poverty to lack of affordable housing to discrimination, among others. Discrimination on the basis of homelessness

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<sup>28</sup> ABS, Australian Census Analytic Program, *Counting the Homeless 2001*, November 2003, pp. 2-3.

<sup>29</sup> Such data is not expected to be available until 2008.

<sup>30</sup> A total of 23,000 people across Australia live temporarily in caravan parks (Australian Bureau of Statistics, *Counting the Homeless 2001*).

<sup>31</sup> See E/CN.4/2005/48, 3 March 2005.

by employers or real-estate agents is an important element which complicates the situation. Legislation is weak or inexistent in regard to this form of discrimination.

47. In every urban centre in Australia, laws now exist which either criminalize essential human activities, such as sleeping, or create “move on” powers that authorize policing authorities to continuously displace people who occupy and live in public spaces. For example, some people are forced to live in public places, yet local council by-laws make it illegal for a person to fall asleep in a public place between sunset and sunrise. These laws disproportionately affect people who are homeless, and indigenous people. They are used to forcibly evict significant populations who live in public areas due to lack of affordable and culturally appropriate living areas with security of tenure. In Darwin, about 70 per cent of people fined for sleeping in public in 2001 were indigenous people.<sup>32</sup> Enforcement of public space laws criminalizes the homeless and may violate civil rights, including the right to be free from inhuman or degrading treatment or punishment.<sup>33</sup> These regulations do not provide people living in public places and who are threatened with eviction the procedural or substantive rights recognized under international laws regarding forced evictions, and therefore may also violate the right to adequate housing.<sup>34</sup>

48. Poverty threatens further the enjoyment of people’s housing rights. The Special Rapporteur noted that the absence of a guaranteed minimum income, together with the fact that social security payments are generally pegged and paid below the Henderson Poverty Line,<sup>35</sup> is a significant contributor to people either living in or being at risk of poverty and homelessness. For example, in September 2004, inclusive of housing costs, the poverty line for a single unemployed adult or young person living independently was A\$ 317.61 per week. The base rate of Newstart Allowance for such a person was A\$ 194.60 (or 61 per cent of the poverty line), rising to \$242.30 if the person also received the highest payable rate of Rent Assistance (or 76 per cent of the poverty line). Similarly, for a single parent with two children, the poverty line was \$433.46 per week, while the base rate of income support available was \$232.10

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<sup>32</sup> Cassandra Goldie, “Living in public space: a human rights wasteland?”, *Alternative Law Journal*, December 2002, p 279.

<sup>33</sup> See, for example, *Jones v. City of Los Angeles & Ors* (Unreported, United States Court of Appeals for the Ninth Circuit, 14 April 2006) in which the court held that the enforcement of a blanket ban on sleeping in public in an area with large numbers of homeless people violated the Eighth Amendment to the United States Constitution, which prohibits cruel and unusual punishment.

<sup>34</sup> See in particular general comments 4 and 7 of the Committee on Economic, Social and Cultural Rights interpreting article 11 (1) of the International Covenant on Economic, Social and Cultural Rights. Also see the Basic principles and guidelines on evictions and displacement (A/HRC/4/18, annex I).

<sup>35</sup> The Henderson Poverty Line is a well-known measure of poverty in Australia and estimates the amount of money which families of different sizes need to cover essential needs.

(or 54 per cent of the poverty line), rising to \$461.70 (or 107 per cent of the poverty line) with Family Tax Benefit A and B and the highest payable rate of Rent Assistance.<sup>36</sup>

49. The situation seems to have worsened since the establishment earlier this year by the federal Government of the new social security legislation, known as the Welfare to Work legislation, which introduced further punitive sanctions for those that are unable to meet the “participation obligations” under the Act. This legislation also reduces social security payments for some of the poorest citizens. In particular, the changes have reduced payments and toughened eligibility requirements for single parents and for people with a disability. For example, under the new legislation single parents whose youngest child is eight or older are no longer eligible for a parenting payment. A person with a disability (including those with a mental illness) who is assessed as having the capacity to work 15-39 hours per week is no longer eligible for the Disability Support Pension, irrespective of whether that work actually exists. Instead both single parents and persons with a disability will receive the reduced Newstart Allowance, which is a significantly lower allowance and comes attached with more onerous obligations.<sup>37</sup>

50. It is estimated that, as a result of the changes, more than 60,000 new applicants, who would have otherwise been eligible, will miss out on the Disability Support Pension and more than 170,000 sole parents and 290,000 children will be worse off.<sup>38</sup> Perhaps most draconian are the amendments to the social security compliance regime. A person who fails to meet a participation requirement (i.e., failing to attend a training course) may have their payment suspended until they comply. Where a person has failed to meet a participation requirement three times, their payments may be suspended for a period of eight weeks and the person will receive no income whatsoever during this time.

51. This penalty regime can result in a loss of income beyond a person’s control and may directly affect the right to an adequate standard of living and housing. A survey conducted by the Salvation Army demonstrated that up to 84 per cent of people who are penalized (“breached”) are subsequently unable to afford food or medication, 63 per cent are unable to pay bills, and up to 16.5 per cent may be rendered homeless as a result of the breach penalty imposed. This penalty regime often places people in a vicious cycle of poverty and homelessness as an individual’s energies are directed towards surviving rather than securing employment.<sup>39</sup>

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<sup>36</sup> Melbourne Institute of Applied Economic and Social Research, *Poverty Lines: Australia* (September Quarter 2004).

<sup>37</sup> See for example information contained on the site <http://www.welfarerightsact.org/>.

<sup>38</sup> David Plowman and Alison Preston “The new industrial relations: portents for the lowly paid” in Special Issue of the *Journal of Australian Political Economy* (JAPE), No. 56, p. 17 (see <http://www.jape.org/>).

<sup>39</sup> For a revealing portrait of the existence of this reality, including the impact of having to live in marginalized housing, in Australia see Mark Peel, *The Lowest Rung: Voices in Australian Poverty*, Cambridge University Press, 2003.



## **B. A national housing crisis**

52. Following his visits and consultations, the Special Rapporteur has come to believe that there is a serious national housing crisis, which affects many sections of the population. Though having a critical and direct impact on the most vulnerable groups of the population, it affects also other segments of Australian society, especially low-income households. He would like to once again stress that poor housing conditions have a direct effect on many aspects of other rights of those affected including the right to health, education, safety, public participation, 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.

53. 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.<sup>40</sup> Unfortunately, this situation does not seem to be acknowledged by the authorities.

54. The Special Rapporteur notes that, while the housing problems encountered have been present for decades, and there are a great number of programmes at federal and state levels, no solution has been achieved on these issues due to the lack of coordination and continuity, eventually leading to inefficiency and loss of resources.<sup>41</sup> He therefore encourages the Government to make housing a national priority. The Special Rapporteur would like to once again stress that poor housing conditions have 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.

55. The Special Rapporteur particularly believes that public housing in Australia is facing a crisis for several reasons. First, the stock of housing owned by states is aging. Yet, states are not adequately maintaining or replacing it. On the contrary, there is a tendency to sell houses to the private market, particularly to get rid of the houses needing most repairs.<sup>42</sup> Second, the demand for public housing is very high, and will continue to rise. Waiting lists of up to 10 years in some states for public housing are an explicit indicator. Third, as a response to the rising demand and the inadequate public housing stock, the criteria for eligibility is becoming increasingly stringent, leaving many in very difficult situations as significant numbers of people are unable to access it in a timely manner.

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<sup>40</sup> Australia is ranked at number 3 on the 2006 UNDP Human Development Index.

<sup>41</sup> As a matter of example, in Santa Teresa (NT), it was stated that some of the material that is mandatory to use in public housing is not appropriate with the climate, and, therefore, has to be frequently replaced, thus enhancing the cost of maintenance. In fact, the cost of maintenance is more than the cost of providing new housing.

<sup>42</sup> According to the Australian Institute of Health and Welfare, in 1999-2000, the number of public dwellings in Australia was 362,967 while in 2003-2004, the number had dropped to 345,335 (Australia's Welfare 2005, p. 442).

56. Furthermore, within the available public housing, there is a need to have a greater range of options to reflect the specific needs of different groups, such as people with disabilities and their carers, large families, single parents with children. This should also be the case for public housing in areas where specific services are available (e.g. schools, services for people with mental health, migrant resource centres for refugees and asylum-seekers, etc.), and where there is community support, which can be particularly important for indigenous peoples, migrants and refugees.

### **C. Affordability**

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

### **D. Homeownership**

58. The Special Rapporteur believes that the Australian homeownership model has neglected sections of society that do not have the means for purchasing their homes, and those facing serious discrimination. He is particularly concerned that the present model not only affects the most disadvantaged groups of the Australian society, but in the coming years is going to affect more and more middle-class households, leaving them out of the system. Already a great number of households are in housing stress for various economic reasons and some are defaulting on their loans and mortgages. Unless basic changes are made in policy and legislation, based on a human rights approach, a much larger part of society will be faced with critical housing problems.

59. In Adelaide, the housing authorities admitted the need for state intervention, without which the market will not automatically deliver housing for low-income people. With Australia's "negative gearing"<sup>43</sup> policy, perhaps the most generous of all developed countries, and the tax benefit from capital gains, a subsidy of A\$ 21 billion is given to the high-end market. The redistribution of even a small amount of this could significantly alleviate the housing crisis for low-income households.

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<sup>43</sup> This allows taxpayers to claim any loss on property rental operations as an offset to other earnings. In particular where the property is geared, through a mortgage, the taxpayer is entitled to claim the full nominal interest cost as an offset to income. As the effect of this is to reduce the taxable income of the taxpayer, the highest reduction in tax payable flows to those at the top marginal rates of income tax. (Department of Families, Community Services and Indigenous Affairs, Research Paper No. 72, Overview of the Australian Private Rental Market 3: The Institutional Framework, <http://www.facsia.gov.au/internet/facsinternet.nsf/research/dss-paper72-ch3.htm>).

### **E. Status of the right to adequate housing**

60. The Special Rapporteur notes a weakness in Australian legislation regarding the implementation and monitoring of the right to adequate housing. For instance, legislation gives little regard to the rights of tenants. Tenancy laws and anti-discrimination acts are difficult to use due to the pressure of the market and the existence of “black-list” databases. Other legislations, such as the anti-social behaviour amendments to the Residential Tenancies Act (NT), complicate the problem.

61. Moreover, legislation such as the new welfare to work laws, cuts in public assistance and re-prioritization of target groups for state assistance may have adverse indirect effects on the right to adequate housing and may result in an increase in evictions for non-payment, given that many households are already under economic stress due to the large proportion of revenue directed towards rent.

### **F. Structural and policy shortcomings and the need for a human rights approach**

62. The Special Rapporteur notes that a large number of studies and reports by non-governmental groups, universities and research centres are available, and suggestions for amelioration of the system have been put forward to the Government. Unfortunately, these findings and recommendations have largely been ignored by the authorities.

63. 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.

64. 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 each level of authority ascribes the responsibility for the failures to the other. This hampers an effective, urgent and long-term strategy to address the situation, which in some cases could be qualified as a humanitarian crisis.

65. Moreover, the Special Rapporteur believes that there are some persisting mindsets that contribute to the problem of housing in Australia. By considering housing as a mere commodity, its central role in the development of individuals and society is not acknowledged. Adequate housing is not a privilege, it is a human right.

66. As stated by the Committee on Economic, Social and Cultural Rights, States should not interpret the right to housing narrowly or restrictively as “merely having a roof over one’s head or ... as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity” (paragraph 7 of general comment No. 4). It is of prime importance that the Government of Australia acknowledge this fact. To this end, the Special Rapporteur believes that it could benefit from an integrated human rights approach to the problem and use the various elements that constitute adequate housing, including security of tenure; public goods and services; environmental goods and services (including land and water); affordability (including access to finance); habitability; accessibility (physical); location; cultural appropriateness; freedom from dispossession; information, capacity and capacity-building; participation and self-expression; resettlement; safe environment; and, security (physical) and privacy.

## **G. Evictions**

67. Forced evictions are considered to be a gross violation of a wide range of human rights under international law and are evidence of a systematic disregard for recognized human rights standards. Increasingly, in jurisdictions where the right to adequate housing is justiciable, domestic courts are finding the prohibition of forced evictions to be an integral element of this right.<sup>44</sup> Evictions push people into homelessness, inadequate housing conditions and poverty, and affect almost exclusively the poorest, socially and economically most vulnerable and marginalized sectors of society.

68. There has been relatively little research into evictions in Australia, thus making it difficult to ascertain their number. Furthermore, since the overwhelming majority of evictions are initiated by landlords due to payment arrears, tenants may unwillingly leave their dwelling at any point in the eviction process, making it difficult to concretely count evictions. Low incomes are a significant problem, studies having shown substantial drops in the incomes of public and private tenants over the last 30 years, resulting in significant levels of debt in both sectors.<sup>45</sup>

69. No laws exist in Australia setting forced evictions in accordance with international human rights standards, as for instance no jurisdiction provides for adequate compensation for people forcibly evicted or appropriate relocation when people are not in a position to secure alternative accommodation themselves.

## **H. Rural areas**

70. In rural or remote areas, access to public services remains problematic. The living conditions in these areas contribute to urban migration, relocation of indigenous people and the break-up of communities, deepening homelessness and the housing crisis in urban areas. These areas need to be provided with the necessary infrastructures and services.

71. Moreover, the cost of living in these areas is high. Although the level of benefits is identical for people living in urban and rural areas, the same services have a higher cost in the latter. These living and housing conditions constitute a disincentive for service workers, such as doctors, nurses or teachers, to live there, therefore deepening the problem of access to basic services.

72. A discrepancy between the reality of rural areas and the perception of the problem by bureaucrats in cities was noted by the Special Rapporteur.

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<sup>44</sup> See, e.g. *City of Johannesburg v. Rand Properties (Pty) Ltd. et al.* (Unreported, High Court of South Africa Witwatersrand Local Division, 3 March 2006).

<sup>45</sup> *Evictions and Housing Management: Toward More Effective Strategies*, authored by Michele Slatter and Andrew Beer, June 2004.

73. Concerns have been expressed, in the light of previous examples such as in Wadey,<sup>46</sup> regarding state withdrawal from smaller homelands, which leaves these inhabitants unsupported, eventually forcing them to move to larger areas.

### **I. Role of civil society**

74. The Special Rapporteur was particularly impressed with the work and dedication of civil society groups. NGO initiatives, including legal clinics for the homeless, support for women fleeing domestic violence, and the “housing is a human right” project are the main impetus of the implementation of the right to adequate housing in Australia.

75. However, all organizations have indicated having to face an overwhelming workload, and feel that the Government relies on them to fulfil its shortcomings while not benefiting from any help from its part.

76. Another particularly disturbing trend appears to be the difficult relations between the Government and civil society, particularly on the issue of advocacy, which was highlighted in all states. Some cases were reported of organizations having been defunded because of their critical position toward state government policies. In other cases, NGOs have chosen not to attend civic sector forums and meetings for fear of being defunded. According to a survey of NGOs conducted by the Australia Institute, 90 per cent believe that organizations that speak out against the Government risk losing their funding.<sup>47</sup>

77. The lack of participation by the concerned communities in the decision-making process and the lack of flexibility in the delivery of social services suggest that the proposed solutions for housing are not sustainable in the long-term. The cultural inadequacy of the houses built for indigenous communities was an example provided to the Special Rapporteur in this regard.

78. A stronger and closer collaboration with the civil society organizations, not only in terms of service delivery, but also in terms of providing open avenues for advocacy and dialogue, is of prime importance in the elaboration of strategies and responses to social problems.

### **J. Other concerns**

79. As mentioned above, tenancy laws and anti-discrimination acts are difficult to use due to the pressure of the market and the existence of “blacklist” databases. If the Government does not adequately address discrimination in the private housing market, it places an additional burden on the public housing market. On several occasions, strong concerns have been expressed about default tenancy databases (blacklists) and their functioning. These mainly pointed to problems of privacy of personal data, difficulty and costs of accessing personal data of the concerned person, and widespread errors (such as cases of women separated from their husbands and being refused

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<sup>46</sup> Erika Zimmer, “Wadey: a case study of the Australian government’s Aboriginal agenda”, 24 August 2006, <http://www.wsws.org/articles/2006/aug2006/wade-a24.shtml>.

<sup>47</sup> Sarah Maddison, Richard Denniss and Clive Hamilton, “Silencing dissent: non-government organisations and Australian democracy”, The Australia Institute, Discussion Paper Number 65, June 2004 (<http://www.tai.org.au>).

rent because their husband is a bad tenant). A Joint Ministerial Report was recently released on this issue.<sup>48</sup> Since the release of this report, the Government has informed the Special Rapporteur that regulations are currently being prepared to ensure that all tenancy database operators comply with the Commonwealth Privacy Act of 1988.

### **III. THE RIGHT TO ADEQUATE HOUSING OF SPECIFIC GROUPS**

#### **A. Indigenous peoples**

80. The Special Rapporteur was particularly disturbed by the adverse housing conditions in the indigenous communities he visited. In both urban and rural areas in all states, those he visited are facing a severe housing crisis, evidenced by the lack of affordable and culturally appropriate housing, the lack of appropriate support services, the significant levels of poverty and the underlying discrimination. The right to adequate housing is the basis for the development of communities and individuals. The distressed and inadequate living and housing conditions of many indigenous communities can be seen as a main source of the problems facing them.

81. Indigenous households tend to have more residents than other households, as evidenced by the 2001 census (an average of 3.5 persons in households with indigenous person(s), compared to 2.6 in other households). Both household size and the proportion of households requiring at least one additional bedroom rose with increased geographic remoteness. Average household size increased from 3.2 residents, including indigenous peoples in major cities, to 5.3 in very remote areas.<sup>49</sup>

82. The Steering Committee for Government Service Provision has reported that indigenous peoples were 5.6 times more likely to live in overcrowded houses than the non-indigenous population. This rate rises to 18.8 in very remote areas.<sup>50</sup>

83. Through his discussion with communities, the Special Rapporteur was informed that indigenous people who are migrating to cities are doing so unwillingly but have no choice because of lack of infrastructure and housing, lack of employment opportunities, health problems and domestic violence.

84. Due to a lack of culturally appropriate low-cost accommodation options for people in urban centres, there is a disproportionately high number of indigenous people who live in public places. For example, in Darwin (NT) the 2001 census showed that almost 6 per cent of the total

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<sup>48</sup> Joint Ministerial Report on Residential Tenancy Databases (see <http://www.ag.gov.au/agd/WWW/agdHome.nsf/D2801B61EABE80A2CA256809001328BA/9001F6B0C1992E48CA25720A007E3B33>).

<sup>49</sup> For a statistical overview of Aboriginal and Torres Strait Islander peoples in Australia, see [http://www.hreoc.gov.au/Social\\_Justice/statistics/index.html](http://www.hreoc.gov.au/Social_Justice/statistics/index.html).

<sup>50</sup> Ibid.

indigenous population in that city lived sleeping rough or in improvised dwellings, compared to 0.34 per cent of the non-indigenous population.<sup>51</sup>

85. The indigenous population has a higher rate of growth than the non-indigenous population, suggesting that their housing problems will worsen in the coming years.

### **1. Housing, health and living conditions**

86. Housing conditions witnessed by the Special Rapporteur have evident impact on the health conditions of its inhabitants, especially on women and children.<sup>52</sup> The situation has been repeatedly documented.<sup>53</sup> For instance, in 1999-2003, the infant mortality rate for Aboriginal and Torres Strait Islander infants was three times that of non-indigenous infants; over 1996-2001, there was an estimated difference of approximately 17 years in life expectancy.<sup>54</sup> In Wadeye (NT), the median life expectancy is 46 years,<sup>55</sup> with death most commonly due to heart disease, kidney problems or diabetes; 20 per cent of the children are stunted, 21 per cent are underweight and 10 per cent wasted.<sup>56</sup>

87. In Alice Springs, the Special Rapporteur visited indigenous patients with health problems such as kidney diseases and in need of dialysis. Lack of infrastructure in their communities forces these persons to go to regional centres where they are confronted with separation from family and either inadequate housing and living conditions or homelessness.

88. The Special Rapporteur welcomes the ongoing work of the Equal Opportunity Commission of Western Australia, which has undertaken a public inquiry into discrimination against indigenous tenants in public housing and the recent establishment of an Implementation

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<sup>51</sup> Cassandra Goldie, PhD thesis, Faculty of Law, University of New South Wales (forthcoming).

<sup>52</sup> For an overview of the link between inadequate housing and living conditions and health-related infestations and infections see Bart J. Currie and Johnathan R. Carapetis "Skin infections and infestations in Aboriginal communities in northern Australia", in *Australasian Journal of Dermatology* (2000) 41, 159-145.

<sup>53</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, Social Justice Report, 2005 - Health Fact Sheet 1 (see [http://www.hreoc.gov.au/Social\\_Justice/sjreport05/sjr\\_2005\\_health1.html](http://www.hreoc.gov.au/Social_Justice/sjreport05/sjr_2005_health1.html)).

<sup>54</sup> Ibid.

<sup>55</sup> According to the UNDP Human Development Index, life expectancy at birth in Australia is 80.3 years ([http://hdr.undp.org/statistics/data/hdi\\_rank\\_map.cfm](http://hdr.undp.org/statistics/data/hdi_rank_map.cfm)).

<sup>56</sup> Erika Zimmer, "Wadeye: a case study of the Australian government's Aboriginal agenda", 24 August 2006, <http://www.wsws.org/articles/2006/aug2006/wade-a24.shtml>.

and Monitoring Group regarding the 165 recommendations of the final report of that inquiry.<sup>57</sup> He also noted that, recently, the NT government has announced an extra A\$ 100 million to build new housing in remote indigenous communities to be spent over five years.<sup>58</sup>

## **2. Shared responsibility**

89. The Special Rapporteur particularly noted the so-called “shared responsibility agreements”, described by many as discriminatory and contrary to international human rights standards.<sup>59</sup> These agreements enable indigenous communities to apply for government funding for public goods and services, but this is made conditional upon the community negotiating contributions in return.<sup>60</sup>

90. Reportedly, the underlying philosophy of “shared responsibility” conceives of indigenous peoples as being somehow responsible for their present disadvantaged state.<sup>61</sup>

91. The Special Rapporteur notes an inconsistency in this policy. On one hand, indigenous communities are facing a wide range of discrimination, including in employment, education and housing. On the other hand, they are asked to bargain for basic services to which generally other citizens are entitled without any conditions.

92. Some have described the “enormous power imbalance [between government and community] embodied in such agreements” which “shift the notion of government responsibility for provision of basic services and infrastructure that it has to all citizens, and makes such responsibilities conditional on certain behavioural or other changes in the community”.<sup>62</sup>

93. Moreover, problems exist with regard to the evaluation of communities’ achievements by the state. For example, in the Murdi Paaki region the state government promised to provide about

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<sup>57</sup> See, Equal Opportunity Commission of Western Australia, “Finding a Place: An Inquiry into the Existence of Discriminatory Practices in relation to the Provision of Public Housing and Related Services to Aboriginal People in Western Australia” (2004), <http://www.equalopportunity.wa.gov.au/housinginquiry.html>.

<sup>58</sup> ABC Online, “\$100 million for NT Indigenous housing”, 19 October 2006.

<sup>59</sup> See for example, Australians for Native Title and Reconciliation (ANTaR), “Shared Responsibility Agreements - a critique” (see [http://www.antar.org.au/index.php?option=com\\_content&task=view&id=96&Itemid=105](http://www.antar.org.au/index.php?option=com_content&task=view&id=96&Itemid=105)).

<sup>60</sup> See <http://www.indigenous.gov.au/sra.html>.

<sup>61</sup> Dr. Rae Norris, “Evaluating Shared Responsibility Agreements: Whose responsibility?”, Centre for Governance and Public Policy, Griffith University, 2006 International Conference, 4-7 September 2006 (see <http://www.aes.asn.au/conferences/2006/papers/125%20Rae%20Norris.pdf>).

<sup>62</sup> Ruth McCausland, 2005 Briefing Paper No. 1: Shared Responsibility Agreements, Jumbunna Indigenous House of Learning, University of Technology, Sydney, p. 28.



A\$ 2 million in funds and technical support for the installation of air-conditioning units in up to 200 community-owned houses, while communities were responsible for creating programmes that would focus on school attendance and encourage young people to participate in community clean-ups and family violence workshops. Two years later, despite the community's work to fulfil all of its obligations, reportedly not a single air-conditioner had been installed.

94. In addition, it is worth noting that the parks sought by the community are to be built and maintained by volunteers or CDEP (work-for-benefits) participants. This again draws attention to the difference between local governments employing fully paid workers to provide services to non-indigenous communities and those indigenous communities that are expected to provide for themselves.<sup>63</sup>

### **3. Cultural inadequacy**

95. Adequate housing necessitates a close examination of its cultural adequacy to the way of life of these communities. Throughout his visit to communities, the Special Rapporteur noted the limited number of house designs, which are mostly unadapted to cultural and social specificity stemming from different notions of "home" or "house". The dominant European-style housing design does not accommodate cultural living practices, including the obligation to extended family members and groups, or use of outdoor living areas, often leading to evictions for alleged overcrowding or anti-social behaviour.

### **4. Consultation and community initiatives**

96. 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 options and non-sustainable solutions, as well as a lack of support and encouragement for the initiatives of indigenous communities. For instance, in the area of Redfern, known as "the Block", in Sydney, he met with representatives of the Aboriginal Housing Company<sup>64</sup> that has been seeking permission to redevelop the area and provide good-quality, affordable housing for Aboriginal people. It was reported that their efforts are hampered by state and local authorities. Reportedly, the Redfern Waterloo Authority (RWA) proposes to significantly increase residential density in every other area around Redfern railway station, except the Aboriginal-owned land in the Block. The Special Rapporteur was informed that RWA's actions have been a deliberate attempt to take control of what has now become prime real estate for speculation purposes.

### **5. Land rights**

97. The Special Rapporteur has repeatedly referred to the indivisible relationship between the right to land and the right to adequate housing<sup>65</sup> - this is even more essential for indigenous

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<sup>63</sup> Norris, *idem*.

<sup>64</sup> See <http://www.ahc.org.au/>.

<sup>65</sup> See chapter III of the Special Rapporteur's report (A/HRC/4/18), scheduled for consideration at the fifth session of the Human Rights Council.

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 all measures introduced are not retrogressive in nature, but seek to incrementally build towards the full realization of human rights.

98. The Special Rapporteur notes with particular concern 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 NT and may call into question Australia's obligations under the International Covenant on Economic, Social and Cultural Rights, including its provisions on self-determination.<sup>66</sup>

99. As cities are developing, surrounding areas are becoming prime lands subject to speculation, which puts camps in these areas, such as the ones in Darwin and Alice Springs, under pressure. This brings out questions related to land ownership, land titles and land leases.

## **B. Women**

100. In many countries, women face de facto discrimination in the areas of housing, land and inheritance rights. They disproportionately experience poverty, systemic discrimination, inequality based on gender or other factors, and violence. They are in particular at risk of homelessness, and the right to adequate housing and land is of fundamental importance for them.<sup>67</sup>

101. 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, people with disabilities, refugees and asylum-seekers), 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, forces many women to either remain or return to situations of domestic violence, and continue to live in inadequate housing where they risk their safety and that of their children. While the Government's efforts to raise awareness of domestic violence are acknowledged, greater commitment is required to ensure that all women are able to access adequate housing, and are not exposed to continuing violence.

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<sup>66</sup> It has been suggested that "community titles" have been perceived by some as being in contradiction to the liberal economic model pursued in Australia, and therefore under attack.

<sup>67</sup> The Special Rapporteur has presented three reports on this issue (E/CN.4/2003/55, E/CN.4/2005/43 and E/CN.4/2006/118) and some of the testimonies and information in these reports relate to Australia. The reports can be found at: <http://www.ohchr.org/english/issues/housing/women.htm>. Other reference: Coalition of Non-Government Workers, "Report to the United Nations Special Rapporteur on adequate housing: women and the right to adequate housing in Australia", Australia, August 2004.

102. An Australia-wide consultation with women pointed out several problems, including:<sup>68</sup>

- Discrimination in the public housing system experienced by indigenous women in NT by means of rigorous enforcement of a requirement for referees, which is not exercised for non-indigenous women;
- Lack of security in houses where women are placed, which is of particular concern to women escaping domestic violence;
- Discrimination against women receiving welfare benefits, most likely due to the stigma associated with welfare beneficiaries, for accessing private rental accommodation with “source of income” being cited as the reason for rejecting their application;
- In rural areas, being too young an age and racial differences have a negative impact on the success of private rental applications, despite their illegality;
- State/territory legislation on residential tenancies and housing rights of women is reportedly lacking. To illustrate, the Residential Tenancies Act 1997 (Vic) contains no provision for terminating a residential tenancy agreement due to domestic violence. If a woman vacates the premises in such a case, she is liable for rent and costs associated with a broken lease and damage caused by violence, and has no avenues to secure adequate assistance for medium or long-term housing. Furthermore, failure by violent spouses to pay their share of rent is common, frequently these women fall into rent arrears are “blacklisted” by real estate agents and consequently face additional obstacles to accessing private housing. Moreover, many women who lived in violent relationships are put on private rental “blacklists” because of damage done by partners or complaints made by neighbours due to disturbances resulting from the violence (see below).

103. According to statistics, in Australia, 23 per cent of women who have been married or in a de facto relationship have experienced violence by a partner.<sup>69</sup> Reportedly, domestic violence is a major factor contributing to homelessness in Australia, particularly for women. In 2003-2004, it is estimated that 33 per cent of the 100,200 clients accessing the SAAP, were women escaping domestic violence, while 66 per cent of the 52,700 accompanying children in SAAP were accompanied by a female parent or guardian escaping domestic violence.<sup>70</sup> In 2004-2005, almost 60,000 women were supported by the homeless assistance services. It is recognized that significantly more women do not seek or receive assistance from support services.

104. NGOs have identified key concerns relating directly to the issue of access to adequate housing for women experiencing domestic violence:

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<sup>68</sup> Australian NGO Shadow Report on the Implementation of the Convention on the Elimination of All forms of Discrimination against Women, October 2005: Women’s Rights Action Network (WRANA), [www.wrana.org.au](http://www.wrana.org.au).

<sup>69</sup> Women’s Safety Australia study (Australian Bureau of Statistics [ABS] 1996).

<sup>70</sup> The Australian Institute of Health and Welfare, Female SAAP clients and children escaping domestic and family violence 2003-2004.

- Lack of available refuge space for women fleeing violence - the average daily turn-away rate for agencies providing refuge services to women escaping domestic violence during 2004 was 48 per cent;<sup>71</sup>
- Lack of suitable emergency accommodation for women from culturally and linguistically diverse backgrounds, disabled women, and indigenous women;
- Lack of long-term housing solutions for women escaping domestic violence. The severe shortage of public housing forces women to seek private housing solutions, which are often unaffordable, or lack sufficient safety and security;
- Despite legislative provisions that can be used to exclude the perpetrator of violence from the home (exclusion order), under-utilization is common because judges and police are reluctant to recommend or to order them, and women are often not aware this option is available. Consequently, women either are forced to leave the home seeking adequate housing elsewhere without financial support or alternative accommodation, or remain in violent relationships. Reportedly, the attitudes and actions of police, lawyers, magistrates and others have tended to reinforce the notion that it is the women and children who should leave.<sup>72</sup>

105. 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 these services, particularly for pregnancy and maternity care.

### **C. Children and youth**

106. On previous occasions, several recommendations have been made by the Committee on the Rights of the Child about problems faced by indigenous children, the spread of homelessness among young people, children in immigration detention, juvenile justice and the disproportionately high percentage of indigenous children in the juvenile justice system. In particular, the Committee has recommended that Australia “increase its efforts to provide affordable housing options and take all possible measures to raise the standard of living of indigenous children and children living in rural and remote areas”.<sup>73</sup>

107. The Special Rapporteur was informed of the lack of adequate refuge for women and disabled children, single mothers with children or youth feeling domestic violence. The very

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<sup>71</sup> The Australian Institute of Health and Welfare, Annual Report, 2004.

<sup>72</sup> Improving Women’s Safety: Literature Review, 2002, Partnerships Against Domestic Violence.

<sup>73</sup> CRC concluding observations: Australia (CRC/C/15/Add.268, 20 October 2005), para. 57.

negative effect of homelessness on children was highlighted, especially the impact on their physical and mental health, their schooling and longer-term life outcomes.<sup>74</sup>

108. It was also stated that some women living in inadequate housing conditions were in fear of having their children removed. Moreover, in some cases, mothers cannot take back their children because they are living in small accommodations.

109. Young people and children are experiencing homelessness in every suburb of Sydney and region of NSW. On census night in NSW, it was reported that 9,137 young people were homeless,<sup>75</sup> sleeping in parks, under bridges, in youth homeless services, with friends or strangers, or in risky situations. Young people are homeless due to both structural and individual causes beyond their control: family breakdown; mental health; lack of affordable housing; lack of income; etc.<sup>76</sup>

110. Homeless services in NSW are stretched to capacity; there is only enough room for 15 per cent of these young people in the 165 accommodation services for young people throughout NSW on any given night.

111. There were 8,850 clients of NSW SAAP agencies between 15 and 24 years of age, including 500 young people under 15 years of age but without an accompanying parent. Family breakdown was cited by 20 per cent of females alone under 25 years old and 14 per cent of males alone under 25 years old as their main reason for seeking assistance.<sup>77</sup>

#### **D. People with disabilities and health problems (including mental health)**

112. In Australia, of the 3.6 million people with disabilities (19 per cent of the population), 50 per cent are women. Many women with disabilities are unable to access high-paying employment, so the high costs of housing and health services they have to meet often make adequate housing unaffordable.

113. Through his mission, the Special Rapporteur met with a large number of disability activists. Many problems were raised, including the lack of modified housing, the lack of

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<sup>74</sup> See for example, Australian Institute of Health and Welfare (AIHW), Homeless children in SAAP 2004-2005, AIHW bulletin No. 48.

<sup>75</sup> Chamberlain, C. and MacKenzie, D., 2004, "Counting the Homeless 2001" New South Wales, 2 2004, "New South Wales At A Glance", Australian Bureau of Statistics, ABS Catalogue No. 10303.1.

<sup>76</sup> The former Chief Justice of the Family Court of Australia, recently described the level of homelessness amongst Australian children as the nation's shame. See Alistair Nicholson, "Children and homelessness in Australia 2006 - a nation's shame", paper presented at the National Homelessness Conference, Sydney, New South Wales, 2006. (<http://www.afho.org.au/conference/documents/nicholson.pdf>).

<sup>77</sup> Homelessness in NSW, information provided to the Special Rapporteur by Homelessness NSW, ACT, NSW Women's Refuge resource centre and Youth Accommodation Association.

consultation, the high risk of homelessness for women with disabilities, lack of statistics and disaggregated data. Other problems were brought to his attention, such as the absence of adequate housing for persons with disabilities in the private rental market, the lack of facilities for people with mental illness to be able to live independently, and the problem faced for adopting universal design.<sup>78</sup> The issue of access to housing and other support services for people with disabilities is also allegedly quite difficult, often leaving them vulnerable to abusive or violent situations with families and “carers”.

### **E. Refugees and asylum-seekers**

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

115. There are three specific groups of asylum-seekers and refugees in Australia: those in detention; asylum-seekers in the community without the right to work; and, refugees on Temporary Protection Visas (TPVs).

116. Regarding the first group, human rights organizations have expressed concerns that large numbers of asylum-seekers in detention are suffering from mental illnesses, and particularly those who are kept in prolonged or indefinite detention are at high risk of suffering chronic depression, incidents of self-harm or attempted suicide.

117. It was frequently reported to the Special Rapporteur that housing options were limited, as asylum-seekers are not eligible for Public Housing or Transitional Housing through the SAAP. Further, without recognition of the right to work under a Bridging Visa E (BVE), access to the private housing market is virtually impossible. This has shifted the cost and responsibility for their welfare onto the under-resourced community sector. NGOs have argued that the Government’s failure to provide asylum-seekers with access to welfare benefits/services is a breach of their international obligations to ensure an adequate standard of living for all, including adequate housing. In a survey conducted by Hotham Mission of asylum-seekers who had been assisted, it was found that 68 per cent of those surveyed were homeless and many suffered from poor dietary health.<sup>79</sup>

118. For those in dire need (i.e. essentially destitute) the federal Government currently funds one programme, for approximately 1,000 individuals a year, which is administered by the Australian Red Cross, called the Asylum Seeker Assistance Scheme (ASAS). Access to this

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<sup>78</sup> The Australian Human Rights Commissioner and Disability Commissioner, Graeme Innes, AM, has recently “proposed a national plan of action which would include low cost changes to housing design to improve access, education and technical support for people wishing to make new and renovated housing more accessible and a consideration of incentives to encourage developers to better meet housing needs”. See HREOC Media Release, 8 November 2006, [http://www.hreoc.gov.au/media\\_releases/2006/91\\_06.htm](http://www.hreoc.gov.au/media_releases/2006/91_06.htm).

<sup>79</sup> Hotham Mission. November 2003. “Welfare Issues & Immigration Outcomes for Asylum Seekers on Bridging Visa E: Research & Evaluation”, *Asylum Seeker Project*, p. 4. ([http://www.refugeecouncil.org.au/docs/current/asp\\_research\\_jan04.pdf](http://www.refugeecouncil.org.au/docs/current/asp_research_jan04.pdf)).

service is limited and applicants are usually unable to receive this benefit once they have applied to appeal the primary decision on their asylum application, leaving many destitute and homeless according to civil society groups. Current policy, which lacks options, has dramatically increased the risk of homelessness for many asylum-seekers. In NSW, for example, the Red Cross has established an asylum-seekers programme with a budget of A\$ 5,000 per month to assist 30 families who would, without that assistance, be effectively homeless. The Red Cross has acknowledged that the current need far outweighs the capacity of this programme.

119. Finally, TPV holders are not entitled to on-arrival accommodation assistance and only have limited access to state-provided public housing assistance (depending on each individual state, rental assistance and other services may be provided). As a result, refugees are often left to find their own accommodation, relying heavily on community organizations and any family or friends they may have to assist them. Currently, only unaccompanied minors, single mothers, or individuals deemed at “high risk” psychologically, are given access to housing services. It was stated generally that the private rental market is reluctant to rent to refugees or on Centrelink benefits.

#### **F. Prisoners and persons released from detention**

120. During his meetings, the Special Rapporteur was informed of the close relationship between homelessness and imprisonment, the fact that homeless people are disproportionately represented in the criminal justice system and the rate of recidivism amongst homeless offenders is high.<sup>80</sup>

121. It was stated that jail serves as a place to resolve the lack of housing for people sleeping rough, with homeless reportedly having a higher risk of being jailed or held in remand instead of being released on bail. Also, because of the lack of mental institutions, persons with mental illness are sent to prisons, which become de facto mental institutions. Some people with mental problems actively try to get back to prison for a “secure environment” and management.

122. The fact of not addressing adequately the housing needs of these groups perpetuates and exacerbates the problems faced by these persons and has negative effects on the society as a whole.

123. According to the Equal Opportunity Commission in Victoria, there is serious systemic discrimination towards women in prisons. It is reported that 1 out of 5 indigenous women were homeless before going to prison. It was alleged that indigenous women coming out of prison do not find housing and 60 per cent return to prison.<sup>81</sup>

124. It seems that juveniles out of prison face the same problems.

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<sup>80</sup> AHURI, “The role of housing in preventing re-offending”, Issue 36, February 2004. See also PILCH Homeless Persons’ Legal Clinic report entitled “Improving the Administration of Justice for Homeless People in the Court Process”, August 2004.

<sup>81</sup> See for example, Eileen Baldry, Desmond McDonnell, Peter Maplestone and Manu Peeters, “Ex-prisoners, homelessness and the State in Australia”, *The Australian and New Zealand Journal of Criminology*, vol. 39, Number 1, 2006.

### **G. Other groups**

125. Other vulnerable groups were identified throughout the visit of the Special Rapporteur, including the elderly, persons with complex needs (e.g. HIV/AIDS, sexual minorities), single parents, migrants and peoples with low incomes. All these groups need specific adequate housing solutions and a right-based approach to efficiently address their situations.

## **IV. CONCLUDING REMARKS AND RECOMMENDATIONS**

126. **In the light of the number of homeless people, the housing conditions in camps and indigenous communities, housing affordability and other issues described above, the Special Rapporteur has come to the conclusion that Australia has failed to implement its international legal obligation to progressively realize the human right to adequate housing to the maximum of its available resources, particularly in view of its possibilities as a rich and prosperous country. There is no national policy framework against which the outcomes of government programmes and strategies can be evaluated to assess to what extent Australian governments are progressively realizing this right. Current indicators from diverse sources show regressive results: reductions in public housing, soaring private rental rates, an acknowledged housing affordability crisis and no real reduction in the number of people who are homeless in Australia. In this context, while being conscious of the good practices that the Government has put in place to address some of the problems related to the implementation of the right to adequate housing, the Special Rapporteur would like to offer the following recommendations.**

127. **Australia should adopt a comprehensive and coordinated national housing policy, and develop a clear, consistent, long-term and holistic housing strategy that addresses structural problems, is efficient, and embodies an overarching human rights approach, with the primary task of meeting the needs of the most vulnerable groups.**

128. **All interested parties should be genuinely consulted in designing policies, strategies and planning in housing. To this end, the Government should engage in a constructive manner with the civil society and advocacy groups.**

129. **In view of the current housing crisis, the Commonwealth should consider creating a Ministry that focuses exclusively on housing.**

130. **Federal and state authorities should make bigger efforts to explicitly incorporate the wide range of international human rights instruments to which Australia is a party, into the domestic legal system. Domestic implementation could include constitutional guarantees for human rights, adoption of bill of rights in states, justiciability of human rights, and guaranteeing efficient complaint mechanisms. Particularly, there is a need to address discrimination, giving effective ways of implementation of legislation including providing a proactive role for states/territories in this regard.**

131. **The Special Rapporteur recommends that state/territory governments review residential tenancy laws in order to ensure compliance with international human rights**



standards, particularly with respect to guaranteeing minimum acceptable accommodation standards, and prohibition on forced evictions.<sup>82</sup>

132. Australian governments should address homelessness and its causes as a priority. Moreover, laws that criminalize poverty and homelessness and those currently disproportionately impacting upon homeless people such as begging laws, public drinking laws and public space laws, should be revised and amended to ensure that fundamental human rights are protected.

133. Australian governments must urgently address the humanitarian tragedy of the lack of housing and basic services for the indigenous peoples of Australia, living on indigenous lands and elsewhere. To this end, the Special Rapporteur encourages relevant government staff to visit and reside in indigenous communities, including town camps, and rural and remote communities, in order to better comprehend the reality and the challenges faced by the populations and communities in these locations.

134. While the Special Rapporteur is satisfied that the Government is envisaging to enhance the funds for rural and remote communities indigenous housing and recognizing the urgency of it (see appendix, paragraph 11), this should not be done at the expense of indigenous Australians who live in urban areas, who also suffer inadequate housing and living conditions. The Special Rapporteur reminds the Government that retrogressive measures, such as cuts in expenditure on public housing or homelessness services, are permissible only in “exceptional circumstances”,<sup>83</sup> which is obviously not the case in Australia.<sup>84</sup>

135. The Special Rapporteur also believes that indigenous peoples should be given a real participatory role and control to the greatest extent possible in their affairs, including through an independent, well resourced, national body representing all communities.

136. Australian governments need to ensure the availability of an adequate housing stock suitable for people with diverse housing needs, including culturally appropriate housing that diverges from European-style housing to accommodate communities with different cultural housing needs, as well as appropriate housing for people with disabilities. The Special Rapporteur suggests the adoption of legal provisions for new construction, both in public and private sectors, to include the necessary arrangements for enabling appropriate use and access by persons with diverse housing needs, rather than adapting and modifying already existing dwellings. This lack creates discrimination and barriers to social participation of these people.

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<sup>82</sup> The Special Rapporteur has developed a set of “Basic principles and guidelines on development-based evictions and displacement” (see A/HRC/4/18).

<sup>83</sup> See CESCR, general comment No. 3 on the nature of States parties’ obligations (HRI/GEN/1/Rev.5) (2001) 18; and “Poverty and the International Covenant on Economic, Social and Cultural Rights”, pp. 4-5, [15]-[18].

<sup>84</sup> Information indicates that in the 2006 federal budget, the federal Government announced a surplus for the ninth time in 10 years and has forecast a surplus of \$10.8 billion for 2006-2007.

**137. The Special Rapporteur encourages the Government to develop and revitalize, in full cooperation with local communities, rural and remote areas with a view to diminishing the migration from rural to urban areas and easing the housing problems in cities.**

**138. Australian governments need to seriously reflect upon the current homeownership model and its possible negative impact on housing affordability and housing availability, including rental housing, particularly for middle and low-income Australians. This issue is affecting an increasing number of Australians, and intervention of the state in the market may be necessary.**

**139. The Special Rapporteur recommends that the Government promptly ratify and implement the Optional Protocol to CEDAW in order to strengthen the protection of women's right to adequate housing.**

**140. The Special Rapporteur hopes that the Australian authorities will fully implement the recommendations on housing and land made to them by the various human rights bodies as soon as possible.<sup>85</sup>**

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<sup>85</sup> Recommendations for the adoption of a housing strategy, both at federal and state level, in line with CESCR general comments Nos. 4 and 7, including provisions to protect tenants from forced eviction without reasons and from arbitrary rent increases has been made in the past (Concluding observations of the Committee on Economic, Social and Cultural Rights, Australia, E/C.12/1/Add. 50, 11 September 2000, para. 34).

## **Appendix**

### **GOVERNMENT POLICIES AND PROGRAMMES**

#### **A. The Commonwealth - State Housing Agreement**

1. The Commonwealth State Housing Agreement (CSHA) is an agreement, authorized under the Housing Assistance Act, between the Australian Government and the states and territories. The purpose of the agreement is to provide funding to assist those whose needs for appropriate housing cannot be met by the private market. The 2003 CSHA, effective from 1 July 2003 to 30 June 2008, provides more than \$4.75 billion for housing assistance such as public and community housing, indigenous housing, crisis accommodation, home purchase assistance and private rental assistance. Every five years, the CSHA is renegotiated between the Commonwealth and the states.<sup>a</sup>

2. The Commonwealth State Housing Agreement includes an “Aboriginal Rental Housing Program”. As part of the total CSHA funding, approximately \$94 million a year is provided to state and territory governments specifically to supply indigenous people with housing.<sup>b</sup>

#### **B. The Supported Accommodation Assistance Program (SAAP)**

3. Established in 1985, the SAAP is Australia’s primary service delivery response to homelessness. SAAP is a jointly funded Australian Government and state/territory programme which assists people who are homeless or at risk of becoming homeless to achieve the maximum possible degree of self-reliance and independence through a range of support and transitional accommodation services. The people that receive assistance under SAAP can include young people, families, women and children escaping domestic violence, older homeless men, single women and men and people of Aboriginal and Torres Strait Islander descent.

4. The SAAP National Data Collection Annual Report for 2003-2004 indicated that there were around 1,300 SAAP agencies across Australia, assisting on average between 20,600 and 22,500 people per day.<sup>c</sup> The Australian Government has a policy leadership role and state/territory governments are responsible for the day-to-day management of the programme.

5. The amount for the SAAP IV agreement (2000-2005) was around 1.5 billion Australian dollars with approximately \$833 million provided by the Commonwealth.<sup>d</sup>

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<sup>a</sup> See <http://www.facsia.gov.au/annualreport/2005/part2/output2-1.html>.

<sup>b</sup> Ibid.

<sup>c</sup> Australian Institute for Health and Welfare, “Homeless People in SAAP: SAAP National Data Collection Annual Report 2003-04” (AIHW Cat No. HOU 126, 2005); xv. See <http://www.aihw.gov.au/publications/hou/saapndcar03-04/saapndcar03-04-c00.pdf>.

<sup>d</sup> <http://www.facsia.gov.au/annualreport/2005/part2/output2-1.html>.

6. In 2003-2004, funding under the “SAAP-national priorities” was allocated to the National Homelessness Strategy. This included funding for the Commonwealth Advisory Committee on Homelessness and for demonstration projects to expand the knowledge base on homelessness and inform future policy and programme development to prevent and reduce homelessness.<sup>e</sup>

7. On 23 May 2005, the Special Rapporteur sent a communication to the Australian authorities regarding proposed funding cuts in the State of Victoria to SAAP. It was alleged that funding cuts by an amount of up to \$30 million over five years were proposed to SAAP programme. When he visited Victoria, the Special Rapporteur was informed that under the latest Commonwealth State SAAP agreement, the Commonwealth withdrew funding for core services in Victoria resulting in Victoria making up the shortfall by committing an extra \$13.8 million over the term of the agreement to maintain homelessness responses. This resulted in Victoria contributing over 57 per cent of funding for SAAP and SAAP like services in Victoria over the 5-year period of the agreement. Reportedly, this has had significant impact on Victoria’s capacity to grow responses to homeless persons.

### **C. Commonwealth Rent Assistance Program**

8. Commonwealth Rent Assistance (CRA) is a financial supplement paid by the federal Government to recipients of Commonwealth income support and family tax benefit. It is intended to help recipients meet the high costs of renting in the private sector and provides money to people on pensions to help cover the cost of renting privately. It helped almost 1 million Australian households with an Australian Government provision of \$2.09 billion in 2004-2005.<sup>f</sup>

9. However, Rent Assistance is not available to students over 25 receiving Austudy,<sup>g</sup> or people on low wages receiving income below the eligibility for base Family Tax Benefit. Also, Rent Assistance does not take into account the higher rents in city areas.<sup>h</sup>

### **D. Community Housing and Infrastructure Program**

10. The Community Housing and Infrastructure Program (CHIP) provided \$249 million in 2005 for indigenous community housing and housing related infrastructure and essential services in rural and remote areas, and community housing in urban areas. The programme provides capital and operational funding for construction, purchase, upgrade and management of adequate and appropriate rental housing, and funding for the establishment and maintenance of

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<sup>e</sup> Ibid.

<sup>f</sup> Ibid.

<sup>g</sup> Austudy payment provides financial help for persons aged 25 years or more and studying or undertaking an Australian apprenticeship full-time.

<sup>h</sup> National Shelter and Australian Council for Social Service, “Rent Assistance: does it deliver affordability?”, September 2003.

essential services such as power, water and sewerage.<sup>i</sup> This programme is being reviewed by the Department of Family, Community Services and Indigenous Affairs and it is not known what recommendations will be made about its future.

11. On 21 February 2007, the Government has announced a proposal to abolish indigenous specific housing in urban Australia, and advocating the abolishment of the CHIP programme on the basis that the programme had failed to deliver on housing outcomes for indigenous Australians and was marred by policy confusion and complex administration. Under the new plan more than \$100 million per year would be scrapped from Commonwealth spending on urban indigenous housing and more than 600 community housing organizations would be affected by funding cuts. The Government proposal includes that the money saved on the CHIP programme will be redirected to indigenous housing in rural and remote areas.

#### **E. Household Organizational Management Expenses Advice Program**

12. The Household Organizational Management Expenses (HOME) Advice Program comprises eight services. Community agencies work in partnership with Centrelink to identify and assist families at risk of homelessness.<sup>j</sup>

#### **F. Centrelink**

13. Centrelink is a government agency delivering a range of Commonwealth services to the Australian community. The majority of Centrelink's services are the disbursement of social security payments and the coordination of Job Network, a national job-matching scheme. Centrelink delivers services primarily on behalf of the Department of Families, Community Services and Indigenous Affairs (92 per cent of services) and the Department of Employment and Workplace Relations (5 per cent of services). As an integrated service delivery agency, Centrelink provides ancillary services such as assistance and education for people receiving welfare payments. It offers 140 different products and services, which it supplies to around one third of Australian citizens.

14. Centrelink also includes community officers that are available to specifically provide services to homeless and at risk people of all ages. These officers deliver Centrelink services to people outside the mainstream office setting in locations like rehabilitation centres, psychiatric hospitals, prisons, hostels, refuges, drop-in centres and organized meeting places, such as food shelters.

#### **G. National Housing Priorities**

15. This programme provides funding to support the development of the community housing sector, including funding to support two national community housing representative bodies, the National Community Housing Forum and the Community Housing Federation of Australia.

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<sup>i</sup> See <http://www.facs.gov.au/internet/facsinternet.nsf/indigenous/programs-chip.htm>.

<sup>j</sup> <http://www.facsia.gov.au/annualreport/2005/part2/output2-1.html>.

## **H. National Housing Research**

16. National Housing Research funds may be used for research, development, demonstration and evaluation in relation to housing. In 2004-2005, this funding was used to supplement the Australian Government's \$1.5 million annual funding commitment to the Australian Housing and Urban Research Institute (AHURI).<sup>k</sup>

## **I. Social Housing Subsidy Program**

17. This programme uses private sector financing models for providing social housing. New South Wales and the Australian Capital Territory had projects funded under the programme in 2004-2005 with overall grants of \$2.045 million.<sup>l</sup>

## **J. First Home Owner Grant**

18. To offset the impact of the introduction of the goods and services tax (GST), the Commonwealth has requested that the states and territories assist first homebuyers through the establishment of the First Home Owner Grant (FHOG).

19. The eligible applicants from 1 July 2000 are entitled to a one-off \$7,000 payment. There is no tax payable on the grant. For a first home or the purchase of a new, but previously unoccupied home, an additional grant can be obtained (actually \$3,000).<sup>m</sup>

20. Concerns have been expressed that incentives such as the First Home Owner Grant has only resulted in enhancing prices.

## **K. Other programmes**

21. The Fixing Houses for Better Health (FHBH) projects target the improvement of houses and household living conditions in remote and rural indigenous communities, using a method known as "housing for health" which recognizes the connection between a series of healthy living practices and the quality and condition of housing.<sup>n</sup>

22. There are also specific state programmes such as the Home Assist Secure in Queensland aiming to remove some of the practical housing-related difficulties experienced by older people and people with a disability who wish to remain living in their home.<sup>o</sup>

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<sup>k</sup> <http://www.facsia.gov.au/annualreport/2005/part2/output2-1.html>.

<sup>l</sup> <http://www.facsia.gov.au/annualreport/2005/part2/output2-1/html>

<sup>m</sup> <http://www.firsthome.gov.au/>.

<sup>n</sup> <http://.facs.gov.au/internet/facsinternet.nsf/research/ops-ops14.htm>.

<sup>o</sup> <http://www.housing/qld.gov.au/programs/ch/support/has.htm>.