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**ПООЩЕНИЕ И ЗАЩИТА ВСЕХ ПРАВ ЧЕЛОВЕКА, ГРАЖДАНСКИХ,
ПОЛИТИЧЕСКИХ, ЭКОНОМИЧЕСКИХ, СОЦИАЛЬНЫХ И КУЛЬТУРНЫХ
ПРАВ, ВКЛЮЧАЯ ПРАВО НА РАЗВИТИЕ**

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

Добавление

ПОЕЗДКА В ИСПАНИЮ*

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Резюме

Специальный докладчик посетил Испанию по приглашению правительства 20 ноября - 1 декабря 2006 года. Основные задачи поездки заключались в том, чтобы изучить положение в области реализации в стране права на достаточное жилище и других смежных прав, уделяя особое внимание аспектам гендерного равенства и запрещения дискриминации, и представить доклад о результатах; инициировать диалог с правительством и гражданским обществом относительно их усилий по обеспечению этих прав; и определить практические решения и передовой опыт в области реализации прав, относящихся к мандату.

В настоящем докладе Специальный докладчик с удовлетворением отмечает, что право на достаточное жилище признается в Испании в качестве конституционного права, и указывает на позитивные шаги, предпринятые центральными и региональными органами власти в целях осуществления права на достаточное жилище.

Вместе с тем Специальный докладчик также отмечает, что экономические и финансовые факторы, включая масштабную спекуляцию, негативно отразились на реализации права на достаточное жилище в Испании. Проблемы доступа и нехватки государственного жилья, в частности арендного фонда, затронули широкие слои населения.

Одной из отличительных особенностей жилищной политики Испании в сравнении с другими странами Европейского союза является то, что в последние десятилетия приоритет отдается приобретению жилья в собственность с использованием таких различных механизмов, как налоговая политика и предоставление государственного жилья. Специальный докладчик считает, что необходимо уделить самое серьезное внимание таким вопросам, как функционирование рынка, существующая модель приобретения жилья в собственность и ее возможные негативные последствия в отношении доступа к жилью для людей с низким уровнем доходов, и что в этой связи требуется вмешательство со стороны государства на рынке жилья.

В заключительной части доклада Специальный докладчик представил ряд рекомендаций, которые, по его мнению, необходимы для выполнения конституционных и международных обязательств Испании. Эти рекомендации включают разработку комплексной и скоординированной национальной жилищной политики, основанной на правах человека и защите наиболее уязвимых лиц, а также строгом наказании такой практики, как "квартирный шантаж", коррупция и дискриминация в секторе недвижимости. Специальный докладчик призывает уделить пристальное внимание отдельным группам, включая женщин, молодежь, пожилых людей, инвалидов, общины рома (цыгане), мигрантов и бездомных, и обеспечить возможность защиты права на достаточное жилище в судебном порядке.

Annex

REPORT OF THE SPECIAL RAPPORTEUR ON ADEQUATE HOUSING AS A COMPONENT OF THE RIGHT TO AN ADEQUATE STANDARD OF LIVING, MILOON KOTHARI, ON HIS MISSION TO SPAIN

(20 November to 1 December 2006)

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 4	5
I. LEGAL AND INSTITUTIONAL FRAMEWORK	5 - 11	5
A. Housing rights within the constitutional framework	5 - 6	5
B. Decentralized competencies and housing	7 - 11	6
II. ISSUES RELATED TO THE RIGHT TO HOUSING	12 - 29	7
A. Affordability	14 - 18	7
B. Public housing	19 - 25	9
C. Vacant houses	26 - 29	11
III. GOOD PRACTICES	30 - 39	12
IV. PARTICULAR CONCERNS IN HOUSING	40 - 59	15
A. Speculation	40 - 44	15
B. Corruption	45 - 49	16
C. Real estate mobbing	50 - 56	17
D. The state of housing and living conditions	57 - 59	19
V. CONCERNS OVER PARTICULAR GROUPS	60 - 83	20
A. Women	60 - 62	20
B. Youth	63 - 65	21
C. The elderly	66 - 68	22
D. People with disabilities	69 - 70	23
E. Roma (gitanos) communities	71 - 73	23
F. Migrants	74 - 77	24
G. Homeless people	78 - 83	25
VI. CONCLUSIONS AND RECOMMENDATIONS	84 - 104	26

Introduction

1. At the invitation of the Government of Spain, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, undertook a mission to the country from 20 November to 1 December 2006. During his mission, he visited Madrid, Bilbao, San Sebastian, Almeria, El Ejido, Roquetas de Mar, Sevilla, Barcelona and Zaragoza.
2. The Special Rapporteur met with high-level representatives at State, autonomous region and local levels, including the Minister of Housing, Ms. Maria Antonia Trujillo; the Secretary of State for Foreign Affairs, Mr. Bernardino León Gross; the Mayor of El Ejido, Mr. Juan Enciso Ruíz; the Vice-Mayor of Seville, Mr. Emilio Carrillo; the Ombudsman of Andalucía, Mr. José Chamizo de la Rubia; the Counsellor of Catalonia, Mr. Francesc Baltasar; the Mayor of Barcelona, Mr. Jordi Hereu; the Special Prosecutor on environment and housing, Mr. Antonio Vercher Noguera; and other high-ranking officials.
3. During his visit, the Special Rapporteur held meetings with a large number of representatives of civil society, including social movements, non-governmental organizations, academics, women's groups and representatives of minorities such as the Roma (*gitanos*).¹
4. The Special Rapporteur wishes to express his gratitude to the Government of Spain for the invitation, the support it provided during this mission and its constructive response to his preliminary observations. He hopes that this visit and the present report will contribute positively to the efforts of the authorities to implement the right to adequate housing in the country and looks forward to continuing his collaboration with the Spanish authorities.

I. LEGAL AND INSTITUTIONAL FRAMEWORK

A. Housing rights within the constitutional framework

5. The right to a “decent and adequate housing” (*una vivienda digna y adecuada*) is recognized in article 47 of the Spanish Constitution. This article includes two important obligations for the authorities, to promote the necessary conditions, and to establish appropriate standards to implement the right and the obligation to regulate the use of land in order to prevent speculation. The Constitution also recognizes the need to involve specific groups in relevant policymaking in addition to their right to participate in the conduct of public affairs.²
6. The Constitution also contains provisions to protect the “social function” of the right to private property (art. 33) and “the right to enjoy an environment suitable for the development of the person” (art. 45). Moreover, article 10 states that the “Provisions relating to the fundamental

¹ In this report, the term Roma refers to gypsies (in Spanish, *gitanos*) originally from Spain or from other parts of Europe.

² <http://www.constitucion.es/constitucion/lenguas/ingles.html>.

rights and liberties recognized by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain”.

B. Decentralized competencies and housing

7. The kingdom of Spain is a decentralized State formed by 17 Autonomous Communities and 2 autonomous cities (Ceuta and Melilla). In this context, legal regulation of housing issues in Spain involves not only the central level but also the regional and local levels.

8. While article 148 of the Constitution establishes that the Autonomous Communities may assume (*podrán asumir*) competences over a certain number of matters including town and country planning and housing, the regional constitutions (*Estatutos de Autonomía*), subsequently adopted, clarified that the Autonomous Communities have exclusive competences on housing and urbanism. Nevertheless, Autonomous Communities are required to implement and develop housing plans established by the central Government.³

9. Article 149 of the Constitution lays down the competencies of the central State which is responsible for the establishment of general guidelines for housing programmes (such as modalities of protection for public housing and its minimum period of time); of the national housing plans (*Planes Estatales de Vivienda*) to be developed and implemented by the Autonomous Communities; and the distribution of credit and housing taxation (such as tax policy, regulation of mortgages and access to loans).⁴

10. Whilst direct competences for housing are in the hands of the Autonomous Communities, the central State has a legal obligation to promote the equal exercise of the rights within the territory (art. 149.1.1 of the Constitution). It has also jurisdiction over basic norms relative to the promotion of public land through the national Land Law, and the minimum amount of land to be dedicated to social purposes. The central State is also in charge of civil legislation (art. 149.1.8) which includes access to land, social housing, rentals, rehabilitation and compulsory expropriation (art. 149.1.18). It is also in charge of the economic and financial policies, through basic rules and coordination of general economic planning (art. 149.1.13) and general financial affairs and State debt (art. 149.1.14). The central State is competent on the questions of immigration, status of aliens and right of asylum (art. 149.1.2), international relations (art. 149.1.3), and basic legislation on environmental protection (art. 149.1.23).

³ In its sentence 125/1988 of 20 July 1988, the Constitutional tribunal stated that Autonomous Communities must follow Central State's National Plan because of the competences of the central State in general economic planning (art. 149.1.13) and general financial affairs (art. 149.1.14). In its sentence 61/1997 of 20 March 1997, the Constitutional tribunal had to consider the constitutionality of certain provisions of the 1997 Land Law (*Texto Refundido de la Ley de Reforma del Régimen del Suelo y Valoraciones*). In this sentence, the Tribunal defined the limits of the central State's intervention in property, expropriation and valuation of land.

⁴ The European Liaison Committee for Social Housing, http://www.cecodhas.org/index.php?option=com_content&task=view&id=80&Itemid=122.

11. Autonomous and State legislation⁵ also grants significant powers to municipal governments (*ayuntamientos*)⁶ in matters concerning planning, management, and development of public stock of land (*patrimonios públicos de suelo*), as well as improving and upgrading existing urban areas.

II. ISSUES RELATED TO THE RIGHT TO HOUSING

12. One of the most significant elements of the Spanish housing policy, compared to other European Union countries, is the priority given during the last decades to the homeownership model through different instruments such as tax policy and public housing. According to the National Institute of Statistics, in 2001, 82 per cent of families live in privately owned homes.⁷

13. The authorities have identified several problems in housing in Spain. These include insufficient stock of public and private rented dwellings, the distortion caused by the high level of capital flooding the housing market, the number of vacant housing units, inappropriate frameworks for renting homes and for building on vacant land and the shortage of affordably priced developable land (mainly for the middle-income population).⁸

A. Affordability

14. Among developed countries, Spain has experienced one of the highest increases in housing prices in recent years. During the last five years, housing prices have increased in real terms at an average annual rate of almost 10 per cent. Prices in Madrid and Barcelona increased by well over 100 per cent between 1997 and 2007.⁹

15. The Special Rapporteur notes that by 2006 the cost of an average house would require paying more than 40 per cent of an average income on mortgages.¹⁰ During his visit, he received a number of testimonies by persons who were defaulting on their payments due to various

⁵ By virtue of Law 7/1985 of 2 April 1985 (*Ley de Bases del Régimen Local*).

⁶ There are more than 8,000 municipal governments (*ayuntamientos*) in Spain.

⁷ National Institute of Statistics (INE), Censos de Población y Viviendas 2001, <http://www.ine.es/>.

⁸ Housing Policies as Instruments of Urban Regeneration, Spain's report to the 17th meeting of the Ministers of Housing of the European Union, p. 260.

⁹ Antonio Vercher Noguera, Public Prosecutor of the Spanish Supreme Court, Thoughts on Corruption, Land-planning and House Construction in Spain, in Françoise Comte and Prof. Dr. Ludwig Krämer, Environmental Crime in Europe; Rules of Sanctions, Europa Law Publishing, Avosetta Series (5), August 2004, chap. 10.

¹⁰ Royal Institution of Chartered Surveyors (RICS), European housing review 2006, chap. 9, <http://www.rics.org/>.

reasons, inter alia, precarious work or unemployment and increases in interest rates.¹¹ Spain has experienced a rise in mortgage interest rates in recent years.¹² Although it is reported that the percentage of vulnerable people in Spain with a mortgage in default in September 2006 was only 0.3 per cent,¹³ the Special Rapporteur is convinced that such a situation is not sustainable in the long term, and more people will experience payment problems in the future, which could affect their right to adequate housing.¹⁴

16. The Special Rapporteur acknowledges that the increase in housing prices has been showing clear signs of slowing down. Nevertheless, he is particularly concerned that the current housing system will increasingly affect the middle-income population.

17. Reportedly, default on payment was the cause of some evictions. Evictions, whether legal or illegal, have a serious impact on individuals, in particular on women and children. In this context, the Special Rapporteur has developed a set of guidelines aiming at helping Governments in situations where evictions are unavoidable and when no alternative can be found.¹⁵

18. The Special Rapporteur was also informed that important events, such as the Olympic Games,¹⁶ as well as tourism and secondary houses, have fuelled speculation in land and a steep

¹¹ About 80 per cent of Spanish families cannot save money each month because of the payments of mortgages and other debts. Moreover, 10 per cent of the population cannot pay their debts (*Expansión*, 1 November 2006, p. 30, available at <http://www.ces.es/servlet/noxml?id=CesColContenido%20M01162451967926~S129127~N20061101-0080.PDF&mime=application/pdf>).

¹² See for instance, *Estadística de Hipotecas (Base 2003), Marzo 2007. Datos provisionales, 30 de mayo de 2007*, available at <http://www.ine.es/daco/daco42/daco426/h0307c.pdf>.

¹³ According to the data of the Spanish Mortgage Association (*Asociación Hipotecaria Española, AHE*), information provided by the Spanish authorities.

¹⁴ The Organization for Economic Cooperation and Development (OECD) has also expressed a similar concern: “Despite some signs of a property market slowdown, residential investment has reached 9.2 per cent of GDP, real estate prices are still rising about 10 per cent per year and household mortgage borrowing is growing excessively” (OECD Policy Brief, Economic Survey of Spain, January 2007).

¹⁵ See Basic principles and guidelines on development-based evictions and displacement, annex I, A/HRC/4/18.

¹⁶ See for instance, Centre on Housing Rights and Evictions (COHRE), Fair Play for Housing Rights, Mega-Events, Olympic Games and Housing Rights, Opportunities for the Olympic Movement and Others, 2007, available at <http://www.cohre.org/store/attachments/COHRE%27s%20Olympics%20Report.pdf>.

rise in the prices of housing in the concerned cities, including Barcelona, Seville and some coastal cities.

B. Public housing

19. In Spain, public housing assistance (referred to as *vivienda de protección oficial* VPO) consists of financial and non-financial assistance to rent, purchase and rehabilitate.¹⁷ The system not only provides subsidies for renting and purchasing VPO units, but also establishes maximum rental and sale prices. Currently, VPO housing prices are up to 50 per cent lower than the free-market value, and it is estimated that 25 per cent of the total housing stock has received some kind of VPO housing subsidy.

20. Yet, as recognized by the authorities, insufficient supply of rental and subsidized housing is a major problem in Spain.¹⁸ The stock of subsidized rented dwellings is scarce and does not satisfy the immediate and future needs of the population. In the early 2000s, it accounted for just 6.3 per cent of all main residences, compared to the European average of 13.7 per cent, while the number of low-cost dwellings being rented covered only 35.4 per cent of poor households, as against 72.8 per cent on average in Europe.¹⁹ Virtually, all of it is in the private sector with only 2 per cent of dwellings classified as public social housing. In addition, although lower than in the private market, prices of social housing tend to be too high for the lower-income segments of the population.²⁰ The liberalization of rental contracts and the lack of a public stock of affordable housing have contributed to a considerable rise in private rental prices.²¹

¹⁷ The details of the various types of assistance can be found in the National Housing Plan 2005-2008. See also article 4 of the Royal decree 801/2005 of 1 July 2005, available at <http://www.mviv.es/es/pdf/normativa/BOE130705.pdf>.

¹⁸ Housing Policies as Instruments of Urban Regeneration, Spain's report to the 17th meeting of the Ministers of Housing of the European Union, prepared for the 16-17 October 2006 meeting in Barcelona, p. 259.

¹⁹ *Economic Survey of Spain 2005: Stabilising the housing market*, available at <http://www.oecd.org/eco/surveys/spain>. The Study states that "low supply of low-rent housing is liable to cause growing problems in the future, because of the probable rise in captive demand for this type of accommodation due to the increase in immigration. Seventy per cent of immigrants rent their homes and most of them live in large towns where real estate prices are the highest".

²⁰ The Special Rapporteur is of the view that a sizable percentage of the population may be falling into this category. Figures indicate that 19.9 per cent of the Spanish population live below the poverty line. See *Encuesta de Condiciones de Vida, Año 2004, Principales resultados, 5 de diciembre de 2005*, available at <http://www.ine.es/prensa/np394.pdf>.

²¹ This liberalization followed a period of rigid control on rents which contributed to the reluctance of owners to rent.

21. The Government informed the Special Rapporteur that since 2004, 271,697 units of VPO have been initiated (94,638 in the last 12 months). However, the demand for social housing seems superior to this. The last draws²² made to attribute social housing from applications received covered only 2.8 per cent of the 54,440 applications in Barcelona, 1.9 per cent of the 53,431 applications in Sevilla, and 5.5 per cent of the 23,737 applications in Malaga.²³

22. The provisions of the New Land Law in force since 2007 seem to try to address this situation by applying a minimum land reserve for subsidized housing. It has been stated that this legal technique, if applied consistently over time, would have two effects. First, it will address the problems of a wide spectrum of society and satisfy the latter's need for housing at prices which are ostensibly lower than those of the market. And secondly it will put pressure on the freehold property market which, if the supply of subsidized housing is sufficiently great and constant over time, will tend to limit price increases.²⁴

23. According to official information, the level of financing for protected homes in Spain has increased recently, reaching the levels of the 1990s. Over 410,000 families have benefited from some kind of financial help for housing in the past two and a half years. Besides providing financial help to buyers and tenants, VPOs also set limits on the maximum prices of these units. Public protection is granted for a limited period of time - at least 30 years - after which the house can enter the free market. The 2005-2008 Housing Plan foresees an increase in subsidies for house purchases by low-income groups. In January 2006, the Ministry of Housing approved a 60 per cent increase in the price of VPO in 64 cities. In addition, a new type of VPO was created (*vivienda concertada*). This type of VPO is especially orientated towards middle-class-income families who do not qualify for help under the normal VPO conditions but who cannot afford to access the free market housing either.

24. The Special Rapporteur notes, however, that aspects of the VPO system have come under criticism from various quarters. The system of draws for attribution of public housing and the usual requirement by municipalities that participants have between five and seven years of legal residence may be detrimental to families or persons in the most immediate need for this kind of housing. It has been reported that the system of draws is also being used by some for speculative purposes. Cases of fraudulent sale of these units during the protection period have also been reported. Moreover, the possibility of selling the VPO after the legal time limit in the free

²² As the number of applications is far more important than the public stock, a lottery takes place periodically in each location to attribute the public housing available or under construction.

²³ Lluís Pellicer, *Una lista de espera interminable*, *El Pais*, 10 March 2007, available at http://www.elpais.com/articulo/madrid/lista/espera/interminable/elpepuesp/20070310elpmad_4/Tes.

²⁴ Javier Burón Cuadrado, Director of Housing Planning and Operative Processes, Department of Housing and Social Affairs of the Basque Government, Land reserves for subsidized housing: lessons learned from Vitoria-Gasteiz, *Architecture, City and Environment*, vol. 1, No. 2, October 2006, available at http://www-cpsv.upc.es/ace/Articles-n2/seccion-politicassurbanas/TEM_BURON_ARTICULOINGLES.pdf.

market has been said to hamper the consolidation of the public housing stock. Moreover, the multiplicity of VPO registers has reportedly been detrimental to a coordinated approach to the problem.

25. Although the price of VPO is lower than that of the market, it still seems too high for parts of the population, particularly for the most vulnerable groups. The system therefore seems to benefit only some groups of the population that can afford the purchase of a house and leaves aside those who cannot purchase or sustain the payment of mortgages or rents. Moreover, according to experience, the subsidization of purchases has not proven to be an effective tool for reducing market prices. What is more, it has only produced a proportionate rise in the original price of the housing unit. According to the Organisation for Economic Co-operation and Development, in view of the strong pressure on demand and the rigidity of the housing supply, tax deductions are largely capitalized into prices. If these tax concessions were not in place, property prices would fall by between 15 and 30 per cent.²⁵

C. Vacant houses

26. Spain is one of the European countries with the largest rate of housing construction during recent years. According to the latest census of 2001, the housing stock contains 20.9 million units, and only 14.1 million families. Many properties are secondary homes and empty properties. In 2001, they accounted for some 14 per cent of the total housing stock, which is about double the total stock of rental accommodation.²⁶

27. Spain possesses the largest number of vacant houses of the European Union. According to the 2001 census, there were 3,091,596 vacant dwellings that represent around 15 per cent of the total stock (not taking into account secondary residences).²⁷ This percentage is reportedly lower than the estimated deficit in the rental housing market.

28. To address this situation, some corrective measures, such as the creation of the Rental Public Society (*Sociedad Pública de Alquiler*), which the Special Rapporteur welcomes, have been implemented. However, these measures appear to be insufficient and only address the needs of the higher end of the rental housing demand.

29. The liberalization of rental contracts initiated in 1985 by the Boyer Act, and continued in 1994 by the Urban Rental Law (*Ley de Arrendamientos Urbanos*), aimed at facilitating in principle the renting of homes by the owners.²⁸ However, it seems that this measure has not been

²⁵ *Economic Survey of Spain 2005: Stabilising the housing market*, available at <http://www.oecd.org/dataoecd/53/3/34586052.pdf>.

²⁶ *Ibid.*, p.5.

²⁷ Official communication dated 6 February 2007.

²⁸ The Boyer Act liberalized post-1985 rental contracts and in 1994, the minimum length of rental leases was set at five years. Nowadays, rents are initially negotiated freely and then indexed on the consumer price index for the life of the contract.

fully productive, has not acted as an incentive to the rental market, and has possibly affected security of tenure. The Special Rapporteur believes that there is a need for more protective measures for tenants in the context of steadily increasing rents. The current rental contracts foresee that during a period of five years, price increases cannot go beyond the CPI (consumer price index). It has been reported that in many cases, at the expiry of this period, landlords have asked for very high increases in rents. As a result, people who cannot afford such an increase have been forced to move out.

III. GOOD PRACTICES

30. The Special Rapporteur notes with satisfaction that Spain has legal provisions to protect the right to adequate housing in line with the international human rights instruments.

31. During his visit, the Special Rapporteur welcomed the efforts that have been made by the Spanish authorities at all levels on the issue of adequate housing. As a matter of priority for government policy, a Ministry of Housing was created in 2004 to address the situation.

32. The Special Rapporteur also welcomed progress in legislation with regard to the implementation of the right to adequate housing, including the new 2005-2008 housing plan, the new technical building code, and the national plan on water quality. The new Land Law (*Ley del Suelo*) that recently entered into force on 1 July 2007 addresses several issues such as:

(a) The basic rights of citizens in relation to housing and in particular, the right to enjoy decent and adequate housing in an adequate environment;

(b) Measures proposed to facilitate transparency and participation of citizens in the process of land development (access to information, participation in the process of elaboration and approval of ordaining instruments, public action to respect the determination of the plans, etc.);

(c) The establishment of a compulsory land reserve (a minimum of 30 per cent of the residential building capacity) for new housing under some kind of public protection plan;²⁹

(d) The establishment of instruments to enable value capture³⁰ from urban development (up to 20 per cent of the capital gains);

(e) The establishment of use of land for public housing as one of the priorities.

²⁹ The question of the proportion of the type of housing to be developed remains open. The Basque Land Law establishes a reserve of 70 per cent of land devoted to social housing, with a maximum of 20 per cent to “*vivienda concertada*”. Moreover, there is no time limit to the protection of VPOs.

³⁰ Value capture refers to the process by which all or a proportion of the increase in land value attributed to “community efforts” rather than the actions of the landowner are recovered by the public sector.

33. The Special Rapporteur also welcomed the process under way to draft a national human rights plan of action. Although details of this draft plan are not yet available, the Special Rapporteur hopes that it will fully and explicitly incorporate economic, social and cultural human rights.

34. The Special Rapporteur also acknowledged the positive efforts that have been made by regional authorities to promote housing rights, such as in the Basque country, and Catalonia and Andalucia.

35. In Catalonia, the draft legislation on the right to adequate housing (*Llei del Dret a l'Habitatge*) punishes acts such as leaving properties vacant, overcrowding and real estate mobbing. Similarly, the Catalan Neighbourhoods Law³¹ aims at halting the deterioration of impoverished neighbourhoods through conservation, renovation and renewal. Since June 2007, measures are under way to address access to adequate housing in Catalonia. The National Agreement on Housing (*Pacte nacional per a l'Habitatge*) aims at ensuring an affordable housing policy for all the population based on solidarity and collective responsibility. Through five thematic guidelines, which are structured into objectives and targets, the Agreement aims at improving access to housing, particularly for young people; improving the quality of the housing stock; improving the housing accessibility of disabled people; preventing social exclusion and guaranteeing adequate housing for homeless persons. In order to achieve these goals, the Government has planned to build 160,000 units under the VPO scheme, improve the housing accessibility and mobility of 35,000 disabled people and build 15,000 units for “social inclusion” and 8,000 “emergency” units for homeless people. In addition, a study group on urban segregation (*Observatorio de la Segregación Urbana*) should be created, to monitor the social cohesion and the non-territorial segregation measures of the plan.³²

36. In Andalucia, the recently approved amendment to the Regional Constitution of Andalucia (*Estatuto de autonomía, Ley 2/2007*) provides for further public policies related to social and economic rights. It specifically mentions a number of priority groups, including persons with low income, minors and the elderly. Article 25 of the code aims at ensuring that public institutions in Andalucia promote public housing and assistance to implement the constitutional right to housing.³³

37. In the Basque country, in contrast with the rest of Spain, the production of public housing, especially in recent years, has considerably increased. One in three houses initiated in this

³¹ Law 2/2004 of 4 June 2004 (*Ley de mejora de barrios, áreas urbanas y villas que requieren una atención especial*).

³² *Pacte Nacional per l'Habitatge 2007-2016, Generalitat de Catalunya*, available at http://mediambient.gencat.net/Images/43_127253.pdf.

³³ *Ley Orgánica 2/2007 de 19 de marzo, de reforma del Estatuto de Autonomía para Andalucía*, available at <http://www.boe.es/boe/dias/2007/03/20/pdfs/A11871-11909.pdf>.

Autonomous Community in 2005 was regionally subsidized, whereas in the rest of Spain it was only 1 in 13.³⁴

38. The Special Rapporteur welcomes the focus given to the right to adequate housing by ombudspersons, such as in Andalusia. Yet, he also notes that the recommendations contained in reports prepared by the ombudspersons have, to a large extent, not yet been implemented.³⁵

39. The Special Rapporteur also welcomes the work of the social movements and non-governmental organizations in the field of housing, including their reliance on international human rights instruments as standards to hold governments at all levels accountable.

IV. PARTICULAR CONCERNS IN HOUSING

A. Speculation

40. According to the Observatory of Sustainability in Spain, 812,294 properties were built in 2005, which is more than Germany, France and the United Kingdom put together.³⁶ According to the Department of Public Works, between 1996 and 2003 the nominal value of land increased by 120 per cent.³⁷ According to the Spanish Central Bank (*Banco de España*), between 1998 and 2005 the price of land increased by 500 per cent, and the price of housing 150 per cent.³⁸

41. One of the most decisive factors for the rise of housing prices has probably been a stock market crisis that lasted from 2000 to 2002. During this period of recession, investors left the stock market and took refuge in the real estate market which had a direct impact on the price of housing. According to the Bank of Spain, between 1988 and 2003, the average return on

³⁴ Javier Burón, “La política de vivienda del Gobierno Vasco” en *Documentación Social*, n° 138, Madrid, 2005, p. 129.

³⁵ See for example *Defensor del Pueblo Andaluz, Informe especial al parlamento, Chabolismo en Andalucía, Diciembre 2005*, available at <http://www.defensor-and.es/informes/ie-chabolismo.htm>.

³⁶ The Organization for Security and Cooperation in Europe (OSCE), *Informe Cambios de ocupación del suelo en España. Implicaciones para la sostenibilidad*, 2006, available at http://www.sostenibilidad-es.org/Observatorio+Sostenibilidad/esp/prensa/noticias/CambiosUsos_Esp_CCAA.htm.

³⁷ See http://www.cincodias.com/articulo/economia/precio/vivienda/Espana/subio/doble/UE/anos/cdscdi/20030324cdscdieco_13/Tes/.

³⁸ *Ministerio de la Vivienda, Suelo y Vivienda, La nueva Ley de Suelo, mayo-junio 2007*, available at http://www.mviv.es/es/pdf/revista/julio2007/s&v_08091011.pdf.

property investment was higher than on stock investments (13.5 per cent compared to 9 per cent).³⁹

42. It has been stated that buying residential property off-plan and selling it before the title deed has been signed can, in some cases, generate capital gains of over 846 per cent in less than a year.⁴⁰ This speculation seems to be important in the upper socio-economic class and with foreign investors.⁴¹

43. According to the Public Prosecutor of the Spanish Supreme Court, the increase in the price of housing is partly due to malpractice by official bodies or the excessive bureaucratization of the system. This increase directly affects the price of housing construction. Whilst in 1996, 26 per cent of the price of building could be attributed to the cost of the land, in 2002 the percentage was 37 per cent.⁴²

44. Increases in prices of housing and speculation have been a major source of profit for large real estate companies, constructors and banks.⁴³ During his visit to the Basque country, the Special Rapporteur was informed that between 1995 and 2005, the price of houses went up by 250 per cent, while building costs went up by 35 per cent. During the same period, mortgages rose from €650 million to €6,000 million.⁴⁴

³⁹ *Economic Survey of Spain 2005: Stabilising the housing market*, available at <http://www.oecd.org/dataoecd/53/3/34586052.pdf>.

⁴⁰ Jose Garcia-Montalvo, *Deconstruyendo la burbuja inmobiliaria: expectativas de revalorización y precio de la vivienda en España*, *Papeles de Economía Española*, número 109, 2006.

⁴¹ Idem.

⁴² Antonio Vercher Noguera, Public Prosecutor of the Spanish Supreme Court, Thoughts on Corruption, Land-planning and House Construction in Spain, in Françoise Comte & Prof. Dr. Ludwig Krämer, *Environmental Crime in Europe; Rules of Sanctions*, Europa Law Publishing, Avosetta Series (5), August 2004, chap. 10.

⁴³ “Few city councils have been able to stand the pressure of promoters, who have purchased large tracts of agricultural land at very low prices for which they have later obtained millions in capital gains and benefits that are not obtainable from any other entrepreneurial activity” (Destruction at all Co(A)Sts, Report about the Spanish Coast Situation, Greenpeace, June 2007, p. 8) available at <http://www.greenpeace.org/raw/content/espana/reports/resumen-destrucci-n-a-toda-cos-2.pdf>.

⁴⁴ *Gloobal, Vivienda e inmigración: un derecho y no un negocio*, marzo 2007, Madrid, available at <http://www.gloobal.net/iepala/gloobal/tematicas/crearpdf.php?id=2663>.

B. Corruption

45. The situation of housing and the large sums of money generated by real estate business have reportedly created problems of corruption in the country.⁴⁵ The difference in price of land which can be developed and land which cannot seems to be one of the reasons for this phenomenon.

46. According to the previous Land Law,⁴⁶ it was possible for local administrations to reclassify land to allow construction on them. This urban reclassification method allowed the conversion of previously protected areas deemed inappropriate for urbanization into areas that could be developed into large residential complexes.⁴⁷ The new Land Law still permits this reclassification but with a number of additional safeguards. While the Land Law seeks to set the guidelines and provisions to guarantee the fulfilment of housing and territorial planning rights in all the territory, it is the competence of local government and autonomous communities to legislate, to create provisions and to implement urban plans that comply with the Land Law.

47. It has been alleged that the lack of local administration resources contributed to the use of land reclassification as a source of financing of political parties. It has also been alleged that some politicians and officials have personally benefited from this situation. Persons in key positions have access to privileged information concerning urban planning and management (forecasting which areas are going to be reclassified, etc.), as well as the capacity to influence urban planning. In the last four years alone Mallorca has modified 227 urban development plans. In the first trimester of 2006, 15 of the 24 complaints on urban development abuse received by the European Union came from Spain. The case of corruption in Marbella, for example, has also shed light on some practices at the local level and led to the instigation of criminal procedures and the intervention of the national Minister of Justice in April 2006.⁴⁸

48. Independent estimates claim that 26 per cent of the income of Municipal Councils comes from urban development speculation.⁴⁹ Although the Spanish Federation of Municipalities and

⁴⁵ See for instance the cases of corruption contained in Destruction at all Co(A)Sts, Report about the Spanish Coast Situation, Greenpeace, June 2007, annex I, pp. 71-77, available at <http://www.greenpeace.org/raw/content/espana/reports/resumen-destrucci-n-a-toda-cos-2.pdf>.

⁴⁶ Land Law 6/1998 (arts. 8, 9, 10 and 11).

⁴⁷ In some cases the reclassification does not guarantee basic services, such as water (*El País*, 16 April 2007).

⁴⁸ *Informe del Abogado del Estado sobre la disolución del Ayuntamiento marbellí*, 4 abril 2006, available at http://estaticos.elmundo.es/documentos/2006/04/04/marbella_abogacia_estado.pdf. The case of Marbella has been largely reflected in the media under the name of Operation Malaya (see for instance <http://www.elpais.com/todo-sobre/tema/Operacion/Malaya/173/> or http://www.elmundo.es/especiales/2006/04/espana/corrupcion_marbella/index.html).

⁴⁹ *El mapa de la corrupción municipal*, *El Mundo*, 10-11-2006.

Provinces only claims to receive 3 per cent of total income from the sale of land, through the property tax and the capital gains tax, as well as taxes on construction, installations and works, urban development provides more income to local corporations than the central Government, which only provides 23 per cent of the funds that finance the 8,000 municipalities of Spain.⁵⁰

49. With regard to this situation, the Special Rapporteur welcomes the nomination of Special Prosecutors to look into these practices and additions to the newly adopted Land Law to combat corruption.⁵¹

C. Real estate mobbing

50. The housing situation has generated many disturbing problems. Amongst others, testimonies and information received by the Special Rapporteur indicate various discriminatory factors with regard to access to housing, including gentrification of cities and resulting segregation, evictions and what has been called “real estate mobbing”.

51. In the draft bill for the right to housing in Catalonia, “real estate mobbing” is defined as “all conduct, acts or omissions, aimed at disrupting a person’s peaceful use of their home by creating a hostile environment, either at a personal social or material level, with the ultimate objective of forcing the adoption of an undesired decision related to their rights protecting their occupation”.⁵² Real estate mobbing can include acts such as:

(a) Non-compliance with the landlord’s obligations of maintenance and conservation of the property, with the intention of declaring the technical or economic bankruptcy of the building thereby allowing for the cancellation of rental contracts;

(b) The refusal to accept payment of the rent, so as to later make a claim for non-payment or to change administrators or bank accounts to ensure that rents never reach their destination;

(c) Frequent changes in the property register without informing the tenants;

(d) Changing locks without giving tenants prior notice, cutting or damaging light and water supply;

⁵⁰ See <http://www.eleconomista.es/economia/noticias/97716/04/07/Espana-pierde-cota-en-lucha-corrupcion-debido-a-sector-urbanismo.html> and related news.

⁵¹ Such as transparency in procedures and those included in additional provisions 9a and 11.

⁵² “*El acoso, considerado como toda conducta que, sea por actuación u omisiones varias o que actúe con abuso de derecho, tenga por objetivo perturbar a la persona acosada en el uso pacífico de su vivienda creando un entorno hostil, ya sea en el aspecto material o en el social o personal, con la finalidad última de forzar la adopción de una decisión no deseada sobre el derecho que ampara su ocupación. El acoso constituye discriminación a efectos de esta Ley*” (available at http://mediambient.gencat.net/Images/43_102134.pdf).

(e) Verbal threats by owners, and hiring people to intimidate tenants.

52. This phenomenon affects mostly households that have old rental contracts (contracted before the Boyer Act), which establish indefinite rental periods at prices notably inferior to the market. The elderly are usually the primary victims of mobbing. This practice also affects property owners who reside in buildings owned primarily by a large real estate company, as well as tenants of properties that are susceptible to changes in use (home to hotel, offices or tourist apartments), or essentially to speculative property sales.

53. Some courts have already considered that this phenomenon is currently posing a social problem. For instance, the Criminal Court of Barcelona stated that “given the disproportionate levels that this [urban] speculation has reached, it is easy to imagine situations in which owners of urban real estate, do not hesitate in forcing by any means necessary, legitimate or not, the termination of old rental contracts, which are not at all profitable”.⁵³

54. The Special Rapporteur received testimonies of people being physically harassed by private agents as part of the mobbing phenomenon. In one court case, an 81 year-old man did not have hot water for a period of two years. The steps of his building were allegedly coated with soap to provoke an accident. In this case the decision acknowledged that the intention of the defendant was to ensure that the tenants did not renew their rental contracts in view of the building’s condition.⁵⁴

55. The Special Rapporteur believes that the recent amendment of the Spanish Criminal Law (art. 173), which introduced the concept of mobbing in the workplace and in contractual relationships could be extended to similar situations arising in other fields, such as real estate mobbing.

56. The Special Rapporteur was disturbed to learn that despite the number of testimonies and reports that he received of cases of real estate mobbing, very few cases have been prosecuted.⁵⁵ He fears that the low number of cases are mainly due to the vulnerability of the persons who are victims of mobbing (age for instance) and the difficulty in engaging in legal action for these persons.

⁵³ See *Recurso de Apelación 156/2006, Audiencia Provincial de Barcelona, sección num. 9.*

⁵⁴ C/ Verdi 28, Barcelona, *Recurso de Apelación 184/2005, Audiencia Provincial de Barcelona, Sección 8ª.*

⁵⁵ According to Mr. Santiago Vidal (*magistrado de la Audiencia Provincial de Barcelona*), out of a total of nine cases have been submitted in the last five years. Six cases have been ruled in favour of those facing “mobbing”.

D. The state of housing and living conditions

57. According to the 2001 census, in Spain, 112,824 people lived in housing with no running water, 13,002 persons lived in buildings in a dilapidated (*ruinoso*) state, 13,660 persons lived in poor (*deficiente*) conditions, and 25,839 in substandard (*malo*) conditions.⁵⁶

58. Some parts of the population such as the elderly are affected more than others. In 2001, more than 40,000 elderly people were living in very poor conditions; 110,000 in poor conditions, and more than 500,000 in defective buildings.⁵⁷

59. The 2001 census stated that a fifth of the elderly in Ceuta and Melilla lived in buildings in poor condition and that this proportion may be quite similar in other parts of the country. Recent reports indicate precarious living conditions, including density in rooms that are subleased (and even beds, chairs and balconies in the most extreme cases).⁵⁸

V. CONCERNS OVER PARTICULAR GROUPS

A. Women

60. During the various meetings the Special Rapporteur attended, a number of issues related to women and housing was raised, including in testimonies.⁵⁹ Housing issues related to women have been highlighted in various parts of this report. This section focuses more specifically on the question of adequate housing and domestic violence.

61. The Special Rapporteur also met with women who were victims of domestic violence. The Law of Comprehensive Measures against Violence against Women, of 28 December 2004, provides that victims shall be given priority in access to public housing and referred to specialized shelters. However, some reports indicate⁶⁰ that this law lacks resources for its

⁵⁶ See also Pedro José Cabrera, European Observatory on Homelessness: Statistics Update 2006, Spain European Federation of National Organizations (FEANTSA), July 2006, available at http://www.feantsa.org/files/national_reports/spain/statistics_report_spain_2006.pdf.

⁵⁷ *Instituto de Mayores y Servicios Sociales (IMSERSO), Las personas mayores en España, informe 2004*, available at <http://www.imsersomayores.csic.es/estadisticas/informemayores/informe2004/index.html>.

⁵⁸ Càritas, Diocesana de Barcelona, *Un futur per a tothom! Memòria 2004*.

⁵⁹ See for instance the report of the Mediterranean Regional Consultation on Women's Right to Adequate Housing held in Barcelona in March 2006, available at http://www.descweb.org/continguts/publicacions/Consulta_Ing.pdf.

⁶⁰ See for instance, Amnesty International, *Más allá del papel*, 12 de mayo de 2005, available at <http://web.amnesty.org/library/index/esleur410052005>.

implementation and that housing measures are still scarce and inadequate.⁶¹ The implementation of measures depends, to a great extent, on the Autonomous Community. Some shelters make it a condition that the women report their attacker, which can be an inappropriate barrier for Roma or illegal immigrant women. Finally, according to the information received, inadequate residential measures are applied by some Autonomous Communities (for instance, Catalonia and the Basque country) in placing victims in pensions and hotels.

62. In some cases, in addition to violence, sexual abuse of children has been reported. Other issues have been highlighted in the meetings. Roma and migrant women expressed their concerns about living in overcrowded houses with no privacy.⁶² Migrant women are faced with various problems including discrimination, the legal requirement to have adequate housing that they cannot afford and the fact of living separated from their children. Single women, including single women with children, have difficulties in accessing and affording adequate housing.

B. Youth

63. According to the Institute of Youth (*Instituto de la Juventud*, INJUVE), in 2005 there were 9,245,420 persons between the age of 15 and 29.⁶³ Young people in Spain have been particularly affected by the current housing crisis.⁶⁴ For instance, only 10.9 per cent of youth between the ages of 18 and 24 have been able to leave their parents' home (*emancipación*). For the age 25-29 segment, the figure rises to 42.4 per cent, but only the segment of people aged 30-34 reaches more than a 50 per cent *emancipación* rate.⁶⁵ According to the Youth Council of Spain, on average, 60.8 per cent of a young person's salary is needed to access private market housing, leading to long-term debts.⁶⁶

⁶¹ In 2004, there were 293 locations providing temporary accommodation in all of the Spanish territory including emergency centres and shelters (*Memoria de actuaciones contra la violencia de género realizada por la Administración General del Estado y las Comunidades Autónomas en el año 2004*, available at <http://www.mtas.es/mujer/violencia/docs/memoria%202004.pdf>).

⁶² Testimonies were made that some of these women are sleeping on the floor of the kitchen because of lack of space and room.

⁶³ The Institute defines youth as persons aged between 15 and 29 years. Ministry of Housing consider youth as persons under 35 years.

⁶⁴ See for instance: *Consejo Económico y Social, La emancipación de los jóvenes y la situación de la vivienda en España, Sesión ordinaria del Pleno de 23 de octubre de 2002, Informe 3/2002*, available at <http://www.ces.es/informes/2002/inf0302.pdf>.

⁶⁵ *Observatorio Joven de Vivienda en España Nº 13, Cuarto trimestre de 2005* available at www.cje.org.

⁶⁶ See <http://www.20minutos.es/noticia/169534/0/vivienda/jovenes/hipotecas/> and [http://www.cje.org/C12/C8/OBJOVI%2014%20\(primer%20trimestre%2020/Document%20Library/notaintroductoria.pdf](http://www.cje.org/C12/C8/OBJOVI%2014%20(primer%20trimestre%2020/Document%20Library/notaintroductoria.pdf).

64. Although problems of “emancipation” have multiple elements, two main reasons have been identified: induction into the labour market and affordability of housing.⁶⁷ According to the *Observatorio joven de vivienda*, a young person must allocate 69 per cent of his/her salary to buy a house on the free market. Similarly, it was estimated that 43.2 per cent of the income of a household headed by a young person must be spent for the same purpose.⁶⁸ These figures increased by 20 per cent in 2006 despite signs of deceleration of prices in the housing market. This may indicate that prices in housing rise much more than average salaries.⁶⁹ Interest rates began to rise at the end of 2005 and continued in 2006, hampering access to the housing market for young people. The economic effort is reportedly higher for women for reasons such as inequality in salaries.

65. Subsequent to his mission, the Special Rapporteur was informed that as of 1 January 2008, persons from 22 to 30 years old may benefit from a new form of State assistance (*Renta de emancipación*) which contributes to their rent for a maximum period of four years.

C. The elderly

66. The elderly represent 18 per cent of the total population. Despite a constitutional provision,⁷⁰ this group faces problems such as low income, mobility and access to the home, and property mobbing. The majority of the elderly live in their own houses (72 per cent), or in accommodation with old rental contracts, their level of income being generally lower than the average.

67. In Bilbao, the Special Rapporteur visited some buildings with architectural barriers which hinder the mobility of the dwellers. The 2001 census indicated that 42.3 per cent of the elderly lived in buildings with more than one floor and without a lift (although the census did not indicate on which floor the elderly persons lived). In addition, the questionnaire concerning the

⁶⁷ It has been also stated that this situation hampers mobility for workers and their opportunities to find work in other parts of the country. See for instance: The European Industrial Relations Observatory -EIRO, available at <http://www.eurofound.europa.eu/eiro/2006/02/feature/es0602207f.html> or Cristina Barceló, Housing Tenure and Labour Mobility: A Comparison across European Countries, *Documentos de Trabajo*, N° 0603, Banco de España, 2006, available at <http://www.bde.es/informes/be/docs/dt0603e.pdf>.

⁶⁸ *Observatorio joven de vivienda en España, boletín n° 17, cuarto trimestre - 2006, el acceso de los y las jóvenes a la vivienda libre y protegida*, available at [http://www.cje.org/C17/C13/OBJOVI%2017%20\(cuarto%20trimestre%20de/Document%20Library/objovi17.pdf](http://www.cje.org/C17/C13/OBJOVI%2017%20(cuarto%20trimestre%20de/Document%20Library/objovi17.pdf).

⁶⁹ Ibid.

⁷⁰ Article 50 of the Constitution states that “The public authorities shall guarantee, through adequate and periodically updated pensions, a sufficient income for citizens in old age. Likewise, and without prejudice to the obligations of the families, they shall promote their welfare through a system of social services that provides for their specific problems of health, housing, culture and leisure.”

living conditions of the elderly 2004, estimated that almost half of the elderly reside in properties on higher floors and that more than a third of the buildings do not have lifts. Some of these houses have been depicted as “prison flats”.⁷¹

68. The Special Rapporteur was informed of “the forced confinement due to physical barriers” and the concern that this drastically reduces personal autonomy, as well as limiting access to basic social, medical care or cultural services and leading to social exclusion.

D. People with disabilities

69. People with disabilities represent 9 per cent of the Spanish population⁷² for which physical accessibility and the means to be as autonomous as possible are important concerns. The Housing Plan 2005-2008 recognizes persons with disabilities and their families as priority citizens regarding the housing policy and it establishes measures in order to enable their access to housing.⁷³ People with disabilities are entitled to receive a grant (up to €3,100) to undertake necessary changes in order to remove physical barriers that impede the accessibility of their homes.

70. However, various groups of people with disabilities have requested better access to subsidized housing and better access to the labour market. Cases of non-adapted housing resources have also been reported.

E. Roma (*gitanos*) communities

71. In several locations, such as in El Bacie (Sevilla), the Special Rapporteur visited slums, some existing for decades, in which some marginalized communities such as Roma groups have been living. He also visited other Roma communities living in housing estates (for example in Polygonos Sur, Sevilla) experiencing poor housing and living conditions, overcrowding and discrimination.⁷⁴

⁷¹ See for instance the report of the Andalusian Ombudsman (Defensor del Pueblo Andaluz): *Personas prisioneras en sus viviendas, informe especial al parlamento Andalucía, Noviembre 2003*, available at http://www.defensor-and.es/informes/ie-presos_vivienda.htm.

⁷² Federación Granadina de Personas con Discapacidad Física y Orgánica, available at <http://www.fegradi.org/areaaccesibilidad.html>.

⁷³ Entrevista a Ministra Trujillo a Comité Español de Representantes de Personas con Discapacidad, available at <http://www.cermi.es/NR/rdonlyres/5A2D4FDC-B1EB-46B0-BC995407BAF39C46/4677/Cer1012.pdf>.

⁷⁴ For an analysis of various discriminations faced by Roma in Spain, one can refer to the study of the National Analytical Study on Housing, Raxen Focal Point for Spain, October 2003, available at http://fra.europa.eu/fra/material/pub/RAXEN/4/house/ES_Housing.pdf. Some studies have shown there is a negative perception of Roma in Spain, including in questions related to housing and rent (see for example: *Centro de Investigaciones Sociológicas (CIS)*, Survey of November 2005, study No. 2625, questions 16 and 17, <http://www.cis.es>).

72. According to the *Asociación Secretariado General Gitano*, in 1999 the Roma in Spain amounted to 630,000 inhabitants, the majority of whom were concentrated in Andalucía (45.35 per cent), followed by Madrid (9.37 per cent) and Catalonia (8.39 per cent).⁷⁵ Concerns have been expressed by several international and regional bodies and civil society organizations in relation to the systematic discrimination and adverse situation faced by the Roma communities in Spain.⁷⁶

73. Tenure is a particular concern for this population. Relocations of Roma settlements are often carried out due to urban development pressures or at the insistence from neighbours. This has created difficulties in terms of social integration, and in some cases has created newly segregated locations.

F. Migrants

74. In Almeria, El Ejido and Roquetas de Mar (Andalucia), the Special Rapporteur received first-hand testimonies of migrant workers who face discrimination in accessing housing, live in informal dwellings, on construction sites, in overcrowded houses, or rent beds by the hour.⁷⁷ He visited structures in which workers were living in very inadequate conditions. He is puzzled that while the economy of some regions has largely benefited from a migrant workforce, not enough has been done to address the housing needs of these persons.⁷⁸

75. In this regard, the Special Rapporteur agrees with the recommendations made by the Special Rapporteur on the human rights of migrants during her visit to Spain in 2003. In particular, the State should adopt “Active policies to encourage rental of subsidized housing for low-income migrants, offering guarantees to owners, and initiating awareness campaigns against

⁷⁵ *Departament de Benestar i Família (2006): Estudi sobre la població gitana de Catalunya, Informe final. Barcelona, Generalitat de Catalunya, p.17.*

⁷⁶ See for instance, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 38, (A/59/38), part two, para. 344; concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/64/CO/6), para. 15; statement of the Council of Europe’s Commissioner for Human Rights and the Special Rapporteur available at <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/824CB02DF5A5C358C125737E00367C30?opendocument> or SOS Racismo Navarra, *Informe anual año 2007 sobre el racismo en Navarra.**

⁷⁷ See National Analytical Study on Housing, Raxen Focal Point for Spain, October 2003, available at http://fra.europa.eu/fra/material/pub/RAXEN/4/house/ES_Housing.pdf.

⁷⁸ See reports of the Andalusian Ombudsman (*Defensor del Pueblo Andaluz*): *El alojamiento y la vivienda de los trabajadores inmigrantes en la provincia de Huelva, Informe especial al parlamento de Andalucía, Julio 2001* and *Chabolismo en Andalucía, Informe especial al parlamento, diciembre 2005*, available at <http://www.defensor-and.es> and Fernández, F., Checa, J. C. (2003) “Vivienda y segregación de los inmigrantes en Andalucía”, *Scripta Nova*, Vol. VII, No. 146.

racism and xenophobia”.⁷⁹ Unfortunately, there is little evidence that these recommendations have been implemented.

76. State legislation concerning immigration, rather than enshrining the right to housing, conceives adequate housing as an obligation of the resident in order to be able to work and exercise the right to family reunion.⁸⁰

77. The insufficiency of the State Plan has been partially alleviated by the Autonomous Communities. For instance, in Catalonia the State Plan has been developed via the Plan for the Right to Housing 2004-2007. Unlike the State Plan, Catalonia included migrants as one of the groups that require specific measures.

G. Homeless people

78. The Spanish Institute of Statistics (INE) estimated at the end of 2005 that there were 21,900 homeless persons in Spain who were being attended to more or less regularly or sporadically by the network of centres (dining halls or shelters) located in cities with more than 20,000 inhabitants.⁸¹ Yet, this may be a conservative figure as there is no official consensus on the definition of homelessness.⁸² For instance, the Government of Catalonia has officially estimated a number of 6,000 homeless while the national survey 2005 undertaken by INE estimated 2,428 homeless people for the same region.⁸³

79. According to a survey undertaken by the Spanish Institute of Statistics in 2006, shelters for homeless people offer 13,003 beds daily in the entire country. The average occupancy rate is 83.1 per cent. The vast majority of shelters are private centres or run by civic organizations.

⁷⁹ Report of the Special Rapporteur on the human rights of migrants on her visit to Spain, (E/CN.4/2004/76/Add.2).

⁸⁰ Royal Decree 2393/2004 of 30 November 2004, confirms that the loss of authorization for residency and/or work, if the foreigner “stops having an adequate home, without being able to have another in three months” (art. 75). In relation to family reunion, it is foreseen that certification from the council or via notary is proof that the applicant has “an adequate home in order to deal with the needs of the person and the family” (art. 42).

⁸¹ Pedro José Cabrera, Report on Statistics European Observatory on Homelessness, European Federation of National Organisations Working with the Homeless (FEANTSA), July 2006, available at http://www.feantsa.org/files/transnational_reports/2006reports/06RSen.pdf.

⁸² “In Spain, homelessness is not tackled consistently, and coordination is poor. A lack of coordination among and between centres for homeless people and service providers makes it impossible to collect reliable and regular information.” (European Commission Employment, Social Affairs and Equal Opportunities DG, Measurement of Homelessness at European Union Level, January 2007, p. 37).

⁸³ INE online database (<http://www.ine.es/inebase/>) and *Pacte Nacional per l’Habitatge 2007-2016, Generalitat de Catalunya*, available at http://mediambient.gencat.net/cat/ciutadans/habitatge/pacte_habitatge_2007.pdf.

The survey revealed that the biggest target populations of the centres are migrants and women experiencing violence.

80. Studies tend to show a shift in the nature of the homeless population in Spain which increasingly consists of women, single-parent families, divorced and separated persons, youth and unaccompanied minors and migrants, the latter representing almost half of the total. Homeless people need residential facilities adapted to their needs and particular situations, such as emergency accommodation, and medium- and long-term transitional housing.

81. The Special Rapporteur believes that homelessness is a complex phenomenon and as such must be dealt with using a comprehensive approach based on human rights, and through coordination between different administrative levels, political areas, non-profit organizations and the private sector.⁸⁴ Moreover, he considers that homelessness should not only be dealt with by the social services, but that housing departments should also take part in managing the problem. Thus the allocation of housing resources for the homeless should be recognized in the State Housing Plan, as should flats for young workers.

82. As a first step towards developing a housing policy that covers the needs of the homeless, the Spanish State should investigate homelessness more thoroughly, paying attention to the quantitative and qualitative characteristics of the homeless and the factors leading to homelessness.

83. Finally, the Rapporteur considers that following the example set by Scotland,⁸⁵ the Spanish State should consider urgently guaranteeing the housing rights of the homeless, bearing in mind their diversity.

VI. CONCLUSIONS AND RECOMMENDATIONS

84. **Since the mission took place, the Special Rapporteur was pleased to hear that the Government has responded positively to his initial comments and its commitments to promptly address the situation. For instance, the Government has acknowledged the necessity to develop public rental housing and has initiated fiscal deductions for tenants to support this housing option.**

85. **In addition to these steps, the Special Rapporteur believes that Spain should reflect on its economic and social policies. Policies and laws that flow from such a reconsideration should be underpinned by a human rights approach to housing and to land. The Spanish Constitution and the international human rights instruments can be the driving force of this approach. Rigorous human rights education and learning is necessary in all the line Ministries in Spain including knowledge of general comments and other interpretative instruments that can assist in law and policymaking on the right to adequate housing.**

⁸⁴ On this issue, see the report of the Special Rapporteur which focused on homelessness (E/CN.4/2005/48).

⁸⁵ Homelessness etc. (Scotland) Act 2003, available at <http://www.opsi.gov.uk/legislation/scotland/acts2003/20030010.htm>.

86. Despite the fact that constitutional provisions recognize housing as a basic right, housing, in practice, is currently considered as a mere commodity to be bought and sold. In this context, the social function of housing needs to be recovered and article 47 of the Constitution fully implemented. All sectors of society, including developers, constructors, real estate agents, civil society groups and other public and private actors, must play a role in the realization of this basic human right.

87. Spain should adopt a comprehensive and coordinated national housing policy based on human rights and the protection of the most vulnerable. In this context, the Special Rapporteur calls for an indivisibility of human rights approach in relation to policies on adequate housing. There is also a need to integrate social policies in all housing and urban planning and policies.

88. The Spanish authorities should gather disaggregated data on housing conditions, particularly of vulnerable groups, that will provide the Government with the information needed to initiate policies consistent with its human rights and constitutional obligations.

89. Legislations and policies at State and autonomous region level should recognize economic, social and cultural rights, in particular the right to adequate housing. The Special Rapporteur recommends that the draft national human rights plan of action fully include economic, social and cultural rights.⁸⁶

90. The Special Rapporteur believes that the primacy given to the homeownership policy model has had several negative impacts on the realization of the right to adequate housing. Firstly, it has marginalized sectors of society that do not have enough means to purchase their homes and those who face discrimination. These groups include, women, low-income households, migrants, young people, the elderly, and Roma. Secondly, it has generated uncontrolled speculation. This has also led to numerous problems, including cases of corruption that have been widely publicized in the media and are being investigated. Over-construction in various regions of the country has also had a grave impact on the environment and long-term sustainability of some regions, including along the Spanish coasts.⁸⁷

91. The functioning of the market, the current homeownership model and its possible negative impact on low-income housing options should be seriously reflected upon. The Special Rapporteur believes that there is no alternative but for the Government, at all levels, to more rigorously intervene and regulate the market in land and housing, to secure the effective implementation of the right to adequate, affordable and accessible housing by bringing down housing and land prices.

⁸⁶ The Government informed the Special Rapporteur that the national human rights plan is in process of elaboration and that no draft could be made available to him. No information on its public availability for consultations, or calendar of its consideration by Parliament was provided.

⁸⁷ See for instance Destruction at all Co(A)Sts, Report about the Spanish Coast Situation, Greenpeace, June 2007.

92. The Special Rapporteur believes that the ownership model is the result of policies introduced in the last decades that have strongly encouraged the ownership model both in public and private housing sectors through tax deductions and other means. This has led to a situation where other tenancy regimes, such as rental for lower income sectors, were not sufficiently promoted.

93. The Special Rapporteur reiterates the recommendation of the Committee on Economic, Social and Cultural Rights (CESCR) in which it requested Spain to “take remedial action to improve the conditions of housing, and provide more housing units, housing facilities, credits and subsidies to low-income families and disadvantaged and marginalized groups, in line with the Committee’s general comment No. 4”.⁸⁸

94. The State should also heavily penalize practices such as “real estate mobbing”, corruption and discrimination in the real estate sector. Proper mechanisms to investigate, sanction and provide redress for such activities should be made fully available to all residents of Spain. The Special Rapporteur is of the view that more rigorous investigations and prosecution of those responsible in these cases, including developers, is necessary and calls for more rigorous implementation of existing legislation, such as the relevant provisions of the new land law.

95. All levels of governments should consider the application of the basic principles and guidelines on development-based evictions and displacement, including the recommendation to conduct eviction impact assessments.⁸⁹

96. Spain may want to consider the establishment of a well-resourced and independent human rights commission at all levels, based on the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). The Special Rapporteur also believes that the Offices of the Ombudsman should be reinforced. The proper functioning of such independent bodies is essential, to enable those individuals that have faced violations of the right to housing to have access to effective complaint and redress mechanisms.

97. The Special Rapporteur believes that the State should ensure justiciability of the right to adequate housing contained in the Spanish Constitution and relevant international instruments, through accessible complaint mechanisms available to all. A timely implementation of the recommendations of treaty bodies and Special Rapporteurs is necessary.

98. All levels of Government should urgently address the adverse situation of the lack of housing and social services for some parts of society, including for vulnerable groups and people on low-incomes, the homeless, migrants and Roma communities.

⁸⁸ Concluding observations of the Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.99).

⁸⁹ See the report of the Special Rapporteur (A/HRC/4/18).

99. Given the interlinkages between violence against women and women's right to adequate housing, the Special Rapporteur recommends that the Spanish authorities continue and develop their work on this issue, including to act with due diligence to prevent, investigate and punish acts of violence against women; to ensure access to temporary and appropriate shelters; and to ensure their security in any given circumstance. The Special Rapporteur recommends that the Government utilize, in this context, the solutions proposed in the work of the Commission on Human Rights on women and housing, such as the introduction of anti-violence provisions in housing legislation and policies and ensuring that domestic violence laws include provisions to protect women's right to adequate housing, including the right to privacy and security.⁹⁰

100. The authorities must ensure affordable public social housing meeting the needs of all, and the creation of various types of accommodation, in order to be able to cope with various situations. Such accommodation should include shelters, emergency housing, boarding houses and transitional housing.

101. There is an urgent need to increase the availability of rental housing, through building more affordable rental housing, a more intensive use of vacant buildings, but also through consolidation of a publicly managed stock of rental housing targeted at meeting the demands of the low-income population and guaranteeing security of tenure for tenants.

102. The Special Rapporteur urges the Spanish authorities to adopt an official definition of homelessness.⁹¹ In order to address the situation, it is of the utmost importance to gather reliable statistics and data on the phenomenon in Spain, as previously requested by the Committee on Economic, Social and Cultural Rights.⁹² The Government should also develop a comprehensive social reintegration programme for all of the homeless, in coordination with the housing and social affairs departments of the different public administrations and NGOs, increase the number of places for emergency as well as transition shelters, and include the problem of homelessness in its housing policy.

⁹⁰ See studies by the Special Rapporteur on adequate housing (E/CN.4/2003/55 and E/CN.4/2005/43, especially paras. 41-48, and E/CN.4/2006/118, especially paras. 32-36). See also the section of the Special Rapporteur's website dedicated to the question of women and housing (<http://www.ohchr.org/english/issues/housing/women.htm>).

⁹¹ The Authorities could consider adopting the "European Typology on Homelessness and housing exclusion" available at <http://www.feantsa.org/code/en/pg.asp?Page=484> or operational definitions as adopted in Australia. See the report of the Special Rapporteur on his mission to Australia (A/HRC/4/18/Add.2, chap. II, section A).

⁹² See E/C.12/1/Add.99. The Ministry of Housing informed the Special Rapporteur that they do not have any statistics or figures on homelessness in Spain.

103. The Special Rapporteur recommends that all possible measures be taken in order to ensure equal opportunities in access to housing, as well as to implement strong mechanisms to document discrimination in access to housing, including statistical tools.⁹³

104. The Special Rapporteur takes note of recent efforts by the Government at various levels to consult civil society on the design of housing and urbanization policies, strategies and planning, notably the State Housing Plan in 2005 and the Federal Land Law Bill, and calls upon the Spanish authorities to continue their efforts to ensure they are increasingly genuine and effective.

⁹³ See CERD/C/304/Add.95, para. 9. For further information on indicators on the right to adequate housing, see the report of the Special Rapporteur (A/HRC/4/18), paras. 3 to 15.