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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, а также о праве
на недискриминацию в этом контексте Милуна Котари**

Добавление

ПОЕЗДКА В ЮЖНУЮ АФРИКУ* **

* Резюме распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен.

** Настоящий доклад представляется после установленного срока, с тем чтобы отразить в нем новую информацию.

Резюме

Цель поездки Специального докладчика по вопросу о достаточном жилище как компоненте права на достаточный жизненный уровень, а также о праве на недискриминацию в этом контексте Милуна Котари в Южную Африку заключалась в том, чтобы изучить положение в области реализации права на достаточное жилище при уделении особого внимания соответствующим программам и политике, направленным на защиту прав человека, относящихся к его мандату. Специальный докладчик выражает свою признательность правительству Южной Африки за направленное ему приглашение осуществить такую поездку.

В своем докладе Специальный докладчик признает такие достижения Южной Африки в сфере нормотворческой деятельности, как ее Конституция, которую зачастую приводят в качестве примера защиты экономических, социальных и культурных прав, включая право на достаточное жилище. Он отмечает, что Южная Африка приняла целый ряд прогрессивных законодательных мер и стратегий, направленных на выполнение права на достаточное жилище. В то же время значительное число граждан Южной Африки по-прежнему не имеют доступа к этому основополагающему праву человека. Он отмечает, что реализации права на достаточное жилище в Южной Африке затрудняется ввиду фрагментарного подхода правительства к осуществлению законов и политики в области жилья, а также действия рыночных сил, отражающих спекулятивные тенденции в сфере недвижимости, и считает, что для улучшения доступа к достаточному жилищу необходимо принять срочные меры.

Специальный докладчик выражает свою обеспокоенность по поводу того, что поправки к существующему законодательству, запрещающему незаконные выселения, а также выдвигаемые на уровне провинций инициативы, направленные на принятие новых законодательных норм, связанных с выселением, могут противоречить положениям Конституции и толкованию права на жилище, принятому Конституционным судом.

В ходе его визита и проведенных им консультаций у него постоянно вызывало обеспокоенность положение, свидетелем которого он являлся, в особенности в некоторых частях страны и применительно к жителям неформальных поселений, где, как убедился Специальный докладчик, условия жизни далеки от требований безопасности и устойчивого характера. Специальный докладчик также отметил проблемы, с которыми сталкиваются правительственные органы всех уровней в деле предоставления адекватной последующей поддержки новым поселениям, созданным в результате программ перераспределения земель.

Специальный докладчик посетил провинцию Лимпопо, где горнодобывающие компании развернули крупномасштабные проекты, которые потребовали переселения нескольких общин. Он считает, что такие проекты не должны осуществляться в ущерб правам человека или окружающей среде, поскольку они приводят к загрязнению вод, принудительному переселению или выселению, а также к уничтожению средств к существованию людей.

Специальный докладчик отмечает прогресс, достигнутый Южной Африкой в области водоснабжения и электроснабжения. В то же время на этапе осуществления политики в области водоснабжения возникли определенные проблемы, и проводимая политика ценоустановления привела к прекращению снабжения домашних хозяйств с низкими доходами за неуплату. Специальный докладчик считает, что нехватка воды и прекращение водоснабжения представляют собой серьезные проблемы, в особенности для людей, страдающих от различных заболеваний, включая холеру и диарею, а также для людей, страдающих от ВИЧ/СПИДа.

Специальный докладчик отметил серьезный дефицит жилья и поддержки для лиц с особыми потребностями, маргинализированных лиц, женщин (в особенности в общинах коренных народов, женщин-инвалидов, женщин-мигрантов и женщин, зараженных ВИЧ/СПИДом), детей и престарелых.

В ходе своего визита Специальный докладчик отметил, что, как представляется, в недостаточной степени налажен механизм конструктивных консультаций между правительственными органами всех уровней, организациями гражданского общества и затрагиваемыми лицами и общинами.

В свете многочисленных проблем, описанных в его докладе, Специальный докладчик пришел к выводу о том, что следует принять все возможные дополнительные меры для обеспечения равных возможностей в сфере доступа к жилью. Существует особая необходимость в реструктуризации политики в области сдачи жилья в аренду для групп с низкими доходами, с тем чтобы обеспечить гарантии владения для арендаторов и сформулировать конкретную национальную политику в отношении "особых потребностей в жилье". Правительственные органы всех уровней должны быть готовы к проведению адекватных консультаций и участию гражданского общества в процессе планирования.

Специальный докладчик призывает Южную Африку рассмотреть возможность ратификации Международного пакта о гражданских, социальных и культурных правах и как можно скорее выполнить заключительные замечания, сформулированные договорными органами Организации Объединенных Наций по правам человека, а также рекомендации, вынесенные специальными процедурами Совета по правам человека.

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON ADEQUATE HOUSING AS A
COMPONENT OF THE RIGHT TO AN ADEQUATE STANDARD OF LIVING
AND ON THE RIGHT TO NON-DISCRIMINATION IN THIS CONTEXT,
MILOON KOTHARI, ON HIS MISSION TO SOUTH AFRICA
(12 APRIL-24 APRIL 2007)**

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Introduction

1. At the invitation of the Government of South Africa, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, Miloon Kothari, undertook a mission to the country from 12 to 24 April 2007. During his visit, the Special Rapporteur was able to visit urban and rural areas such as Platfontein (Northern Cape); Sterkwater, Ga-Pila and Mothlohlo (Limpopo); Johannesburg, Ekurhuleni (Gauteng); Durban (KwaZulu Natal); and Cape Town (Western Cape).
2. The Special Rapporteur met with high-level representatives at State, provincial and municipal levels, including the Deputy Minister of Foreign Affairs; Minister of Agriculture and Land Affairs; judges of the Constitutional Court; Members of the Parliamentary Portfolio Committee on Housing; Deputy Minister of Justice and Constitutional Development; Chairperson and members of the South African Human Rights Commission; the Chief Land Claims Commissioner; Director-General of Finance of the Ministry of Finance; and high-ranking officials in all spheres of Government including Directors of Provincial Departments of Housing. The Special Rapporteur also met with civil society members, including non-governmental organizations (NGOs), social movements, academics and women's groups. He was very impressed with the level of competence and dedication to work of these women and men towards the enjoyment of the human right to adequate housing for all.
3. The Special Rapporteur would like to thank the Government for welcoming him and the extensive efforts made by both Government officials and civil society groups that facilitated meetings with a wide range of relevant actors.

I. THE LEGAL AND INSTITUTIONAL FRAMEWORK AND THE SOCIO-ECONOMIC CONTEXT

4. Since the end of apartheid in 1994, South Africa has made commendable efforts to address issues of racial segregation and inequality, and systematic human rights violations.

A. Legal and institutional framework

5. After 300 years of colonial rule, and 82 years of white minority rule (including 46 years under the policy of apartheid), South Africa's first democratic elections were held in April 1994 under an interim Constitution which was modified in 1996. The process of drafting the Constitution involved extensive public participation.

6. The South African Parliament is bicameral, consisting of the National Assembly and the National Council of Provinces. There are nine provinces in South Africa, each with its own executive and legislative branch. While the national Executive Branch is in charge of the design of national policies, the provinces have responsibility for the delivery of housing programmes and other State services and implementation of national policy. Municipalities also have competence in local matters affecting their jurisdictions. They implement national housing policies in their areas of jurisdiction if accredited to do so and also have legislative competence for settlement planning under Schedule 4 of the Constitution. South Africa has ratified most core international human rights treaties; however, it has signed but not yet ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR); nor has it ratified the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW).

7. Although it has not ratified the ICESCR, South Africa supports the enhanced protection of economic, social and cultural rights at international level (e.g. the draft optional protocol to the ICESCR).

8. South Africa is one of the few countries that have constitutional provisions recognizing and protecting socio-economic rights. The Constitution is often cited as an example for the protection of such rights. It explicitly addresses the right to adequate housing; section 26 states that “1. Everyone has the right to have access to adequate housing. 2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right. 3. No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.” Section 28 (1) c of the Constitution also calls for the right of children to basic shelter.

9. In addition, the Government of South Africa has put in place a number of legislative and other measures aimed at fulfilling the right to adequate housing, including the provision of rental housing, allocation of land for purchase and subsidizing the building of housing, among others.

10. Several institutions play an important role in promoting the enjoyment of human rights in South Africa. They include: the Public Prosecutor, the Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the Auditor-General, and the Electoral Commission. During his mission, the Special Rapporteur visited the South African Human Rights Commission (SAHRC). SAHRC, established in accordance with the Paris Principles, handles complaints on human rights violations and also aims to create a national culture of human rights through its advocacy, research and legal functions.

11. The Constitutional Court of South Africa, the highest court, has been called upon to interpret constitutionally enshrined human rights and their implementation in a number of landmark decisions. These decisions have reinforced the justiciability not just of housing rights, but a number of socio-economic rights.¹ In the *Grootboom* judgement, for example, the Constitutional Court found that the State is constitutionally obliged to take steps to assist people living in crisis and emergency conditions by making available land and appropriate services, as well as water and sanitation. The case also made explicit the State's responsibility in the fulfilment of housing rights through the creation of the conditions for access to adequate housing for people at all economic levels of South African society.²

12. Subsequent cases have further enunciated these rights and have led to the passing of legislation and amendments that reflect the Government's obligations, including the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 1998 (PIE Act), which makes it a criminal offence to evict someone without a court order, and changes to the National Housing Code which set out policies for the provision of emergency accommodation. Other legislative responses include the Housing Act 1997, and the Social Housing Act (2006).

13. Since 1994, according to official data,³ almost 3 million subsidies for housing have been approved. In 1997, it was estimated that approximately 2.4 million households lacked access to adequate housing; reports state that the housing shortfall increases by 204,000 households per annum.⁴

14. In 2004 a comprehensive plan for sustainable human settlement was designed. This policy, "Breaking New Ground": A Comprehensive Plan for Developing Sustainable Human Settlements (hereafter "Breaking New Ground"), seeks to ensure the realization of the right to housing enshrined in the Constitution.⁵

¹ Some of these important decisions can be found in the following cases: *Republic of South Africa v. Grootboom*, October 2000 (CCT 11/00); *Port Elizabeth Municipality v. Various Occupiers*, October 2004 (CCT 53/03); *Jaftha v. Schoeman and Others*, May 2004 (CCT 74/03); and *President of the Republic of South Africa and Others v. Modderklip Boerdery (Pty) Ltd (Agri SA and Legal Resources Centre, amici curiae)* November 2004 (CCT 20/04).

² *Republic of South Africa v. Grootboom*, October 2000 (CCT 11/00).

³ National Department of Housing, <http://www.housing.gov.za/>.

⁴ Figures provided by the National Department of Housing.

⁵ The implementation of this programme is guided by various pieces of housing legislation such as: The Home Loan and Mortgage Disclosure Act, the Rental Housing Act, Housing Consumer Protection Measures, etc., available at <http://www.housing.gov.za/>.

15. It is also relevant for housing to note that, in order to promote the fulfilment of the right to land, provided in section 25, paragraphs 1 and 2 of the Constitution, the Commission on Restitution of Land Rights and a Land Claims Court were established to “provide for the restitution of rights in land in respect of which persons or communities were dispossessed under or for the purpose of furthering the objects of any racially based discriminatory law”.⁶ The Commission is mandated to promote equity for victims of dispossession, particularly the landless and the rural poor; reconciliation through the restitution process; and to contribute towards an equitable redistribution of land rights.⁷ It has also developed a number of programmes to implement this goal, including the land tenure reform programme which aims at preventing farm dweller evictions. The main goal of the Commission was to redistribute 30 per cent of white-owned agricultural lands by 2014.

B. Socio-economic background

16. South Africa is a nation of diverse origins, cultural background, languages and beliefs. The total population of South Africa is 47.9 million.⁸ The African population accounts for approximately 38.1 million, the white population is estimated at 4.4 million, the coloured population⁹ at 4.2 million and the Indian/Asian population at 1.2 million. Fifty-one per cent of the population is female. There are six large groups who identify themselves as indigenous. These ethnic groups include the three main San peoples (Xun, Khwe and Khomani), the various Nama communities, the major Griqua associations and so-called revivalist Khoisan.

17. Almost half the South African population (21.9 million people) live below the national poverty line as reported by the United Nations Development Programme (UNDP) in 2004 and

⁶ Restitution of Land Rights Act, 1994, available at <http://www.info.gov.za/acts/1994/a22-94.pdf>.

⁷ Section 25 of the Constitution provides that: “the state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis” and that “A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.” available at <http://land.pwv.gov.za/restitution/Default.htm>.

⁸ Mid-year population estimates, 2007, available at <http://www.statssa.gov.za/publications/P0302/P03022007.pdf>.

⁹ The term “coloured” refers to an ethnic group of people who possess some degree of sub-Saharan ancestry. See http://www.safrica.info/ess_info/sa_glance/demographics/population.htm.

two thirds of total income is concentrated in the richest quintile of the population.¹⁰ The high level of unemployment is also a key contributor to inequality; according to the International Labour Organization (ILO), in 2006 the total unemployment rate was 25.5 per cent of the economically active population.¹¹ Life expectancy at birth remains very low (47 years in 2004) due to the high prevalence of HIV/AIDS.

18. In terms of poverty, the Nama and the San people constitute some of the poorest sectors in South African society, partly because they live in rural areas but also because of stigma and discrimination, as they are seen as fit only for menial labour.

19. South Africa has also become a major host country for immigrants. It has in recent years tried to strengthen a policy which targets immigration of skilled labour. There are approximately 2 million asylum-seekers and undocumented migrants in the country.¹²

II. GOOD PRACTICES

20. The Special Rapporteur welcomes “Breaking New Ground”, the ambitious housing policy formulated by the National Department of Housing, which seeks to promote sustainable human settlements and articulates a commitment to housing projects and developments that are socially inclusive and integrated. The main features of the “Breaking New Ground” policy include the informal settlement upgrading programme, centred on poverty alleviation; the release or acquisition of public land for housing projects; the management of housing stock; and the provision of infrastructure and services for low-income communities.

21. One part of this policy foresees implementation of “inclusionary”¹³ measures such as encouraging developers to include low-cost housing in projects targeting middle and upper class sectors. This aims at creating inclusionary housing and integrated settlements through

¹⁰ Beyond scarcity: Power, poverty and the global water crisis, Human Development Report 2006, United Nations Development Programme (UNDP).

¹¹ ILO, <http://laborsta.ilo.org/>.

¹² Office of the United Nations High Commissioner for Refugees (UNHCR), Flow of asylum-seekers to South Africa grows in 2006, 2 February 2007, available at www.unhcr.org/news/NEWS/45c35d1c4.html.

¹³ The purpose of the “inclusionary housing programmes” is to foster social, racial and economic and spatial integration. In this context, see A Review of the International Experience with Inclusionary Housing Programmes: Implications for South Africa, prepared for the National Department of Housing, February 2006, available at <http://www.housing.gov.za/Content/Documents/Inclusionary%20Housing%20in%20SA.pdf>.

establishing subsidy programmes for the lowest-income sectors in order to redress the current context of income and race polarization within South African cities.

22. In consonance with “Breaking New Ground”, many policies have been developed at the provincial and municipal levels. During conversations with officials concerning such policies, the Special Rapporteur was encouraged by the frankness with which they discussed the challenges for adequate housing and associated rights in South Africa.

23. The authorities also informed the Special Rapporteur of other positive steps. The introduction of the National Home Builders Registration Council (NHBRC) which requires the listing of all projects, the registration of all builders and ongoing inspections of houses, has reportedly improved the quality of government-subsidized houses. It has also put penalty measures for builders, and other service providers in the value chain, who are not following the standards and regulations of the NHBRC and other institutions. The urban renewal incentives ensure that developers invest money in renovating buildings for low-income housing. In addition, the Government has a programme to repair and improve some of the houses built between 1994 and 1999.

24. The Special Rapporteur also welcomes housing projects that aim to realize the right to housing, taking into account the indivisibility of rights. He welcomes the work of social movements and non-governmental organizations in the field of housing.

25. The Special Rapporteur was impressed by the example set by Freedom Park, an informal settlement upgrading project in Cape Town comprising 700 backyard dwellers, mainly women, who occupied a vacant piece of land in their neighbourhood in April 1998. The process of occupation was highly organized from the beginning and occupants designed plots before erecting their shacks. In July 2001 basic infrastructure was provided, including access to water, sanitation and electricity, as part of the programme of emergency servicing of informal settlements. With the assistance of Development Action Group and the Legal Resources Centre, the community initiated an internal restructuring and organizational process. In 2003 the City of Cape Town proposed to upgrade the informal settlement of Freedom Park as part of a broader housing project initiated under the presidential Urban Renewal Programme. The programme aimed to build 493 units in order to accommodate 282 families from Freedom Park and 211 from the City’s waiting list. Throughout the participatory planning approach and the Peoples Housing Process (PHP), the community has been able to increase the size of homes, with additional savings added to the public subsidy, and keep control over the design and quality of new homes. In early 2006, an Irish initiative¹⁴ offered to bridge the savings deficit.

¹⁴ Niall Mellon Township Trust.

26. The Special Rapporteur also visited a short-term transitional housing project for abused women and children that is being developed in Cape Town. The Saartjie Baartman Centre for Women and Children is an innovative one-stop women's centre which offers a range of services, such as safe accommodation, counselling, job skills training and legal advice to women and children who experience domestic and/or sexual violence. Hosting up to 22 mothers and 30-40 children, the centre aims to assist abused women who do not benefit from housing subsidies. In 2006, the Centre collaborated with the Housing and Community Buildings Unit¹⁵ in launching a paper entitled *Special Needs Housing: Developing an Approach for Policy Guidelines* focusing on shelters for abused women and their children, children and youth, people living with/affected by HIV/AIDS and second stage housing for abused women and their children.¹⁶

27. The Special Rapporteur welcomes such initiatives and commends them to the relevant authorities, who may want to consider integrating such successful practices more broadly into housing policies.

III. ISSUES OF CONCERN

28. The Special Rapporteur notes the positive measures undertaken by the Government in the field of adequate housing. He also notes that, in spite of these measures, more is to be done as a significant number of South Africans still do not have access to adequate housing. The Special Rapporteur acknowledges that there is a time lag between the introduction of a new developmental policy and visible results on the ground. He nevertheless considers that a number of actions must be urgently taken to improve access to adequate housing.

A. Access to land

29. The Special Rapporteur believes there is a link between homelessness and landlessness; he has repeatedly drawn attention to the linkages between lack of access to land, evictions, rural and urban poverty and the realization of the right to adequate housing. The legacy of apartheid is most visible in the land ownership structure in South Africa. The post-apartheid Government inherited a highly unequal land ownership structure, created by legislation in the early twentieth century and reinforced by apartheid, whereby 75 per cent of the population were settled on 13 per cent of the land.

¹⁵ The Housing and Community Buildings Unit was established in 2005 by ACG Architects and Development Planners.

¹⁶ http://ftp.shf.org.za/tsn_special_needs_policy.pdf.

30. Despite the various programmes that the Commission on Restitution of Land Rights has implemented and the high rate of processing of filed claims (90 per cent of the applications filed since 1994 have been settled), the current pace of redistribution of land remains very slow.¹⁷ The State has acknowledged that only 3 per cent of land was redistributed between 1994 and 2006, resulting in many remaining landless and thus without prospects for development or poverty alleviation.

31. The slow pace of land delivery was largely due, according to State officials and civil society, to the “willing buyer, willing seller” principle for land redistribution. One of the overarching obstacles for the implementation of the reform is also said to be that white commercial farmers have overvalued the land, making it difficult for the State to meet the costs of buying it.¹⁸ The general speculative rise in land prices is another factor.

32. The Special Rapporteur notes that for land redistribution programmes to be successful they should be accompanied by long-term provision of post-settlement support and by policies that progressively enable the newly settled communities to access services, and develop livelihoods. In some regions of the country, lack of support and the high rates of unemployment, in addition to low incomes and the absence of subsidies for transport, could make it impossible for members of the newly settled communities to earn their livelihoods. The distance of many new settlements from viable work opportunities and community facilities seems problematic. The Special Rapporteur is concerned that these obstacles could jeopardize the gains that the community has made in recovering their lands.

33. In 2005, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples conducted a mission to South Africa and formulated several recommendations to help to fill gaps and find durable solutions to improve the human rights situation of indigenous peoples in the country,¹⁹ in particular with regard to their access to land

¹⁷ According to the 2005-2006 annual report of the Commission on Restitution of Land, 71,645 out of 79,696 claims were settled by 31 March 2006, leaving 8,051 outstanding claims. The report notes that 11 per cent of the settled claims were rural and 89 per cent urban. The total amount of land involved in settled restitution claims was 1,067,152 ha and ZAR 2.9 bn was paid in compensation. However, the observations made on budgets for 2006/07 estimated that the restitution programme may spend only ZAR 1.9 billion of the ZAR 2.7 billion allocated budget by the end of the financial year (Report of the Portfolio Committee on Agriculture and Land Affairs on Budget Vote No. 29, dated 28 March 2006, para. 7.1.8, available at <http://www.pmg.org.za/docs/2006/comreports/060523pcagricreport2.htm>).

¹⁸ South African Human Rights Commission (SAHRC), 6th Economic and Social Rights Report, August 2006.

¹⁹ E/CN.4/2006/78/Add.2.

and housing. No information was available during this mission on the extent to which those recommendations have been considered or implemented.

34. The Special Rapporteur reiterates the importance of considering human rights in the implementation of land policies. As noted at the 2005 Land Summit by authorities from all levels of the Government, academics and NGOs, land and agrarian reform alone cannot undo the injustices of the past, but must contribute to the enjoyment of an adequate standard of living.²⁰

B. Housing policy implementation

35. In December 1994, a white paper on housing entitled A New Housing Policy and Strategy for South Africa was proposed.²¹ It contrasted in many ways with the February 1994 Reconstruction and Development Programme (RDP) which sought to deliver 350,000 housing units per annum in order to eliminate the housing backlog over a 10-year period. A National Housing Subsidy Scheme (NHSS) was established in order to fast track delivery and to provide a wide diversity of housing opportunities. As of 2007, more than 2.4 million subsidies have been approved for housing construction by the Government.

36. The Special Rapporteur noted praiseworthy efforts in this field. However, the South African Parliament has noted a number of problems negatively affecting social housing policies, including the lack of cooperative governance in housing development; the insufficient information-sharing between levels of administration; the lack of integrated housing development which ignores the need for social services within housing projects; and poor quality construction.²² The Special Rapporteur observed that the realization of the right to adequate housing in South Africa is compromised by the Government's fragmented approach to the implementation of housing law and policy.

37. The Special Rapporteur also noted during his mission that while well-intentioned policies have been developed at the national level, few mechanisms seem to be in place to ensure that these policies are being implemented. He also noticed the lack of a comprehensive evaluation of housing policies. The Special Rapporteur believes that assessing the strengths and weaknesses of

²⁰ Land Summit, 27-31 July 2005, report available at http://land.pwv.gov.za/Land_Summit/media/Summit_in_Media/Docs/June_06/Land%20Summit%202.PDF.

²¹ Available at <http://www.info.gov.za/whitepapers/1994/housing.htm>.

²² An Analysis of the Legislative Framework Governing Housing Delivery in South Africa, Research Unit, Parliament of South Africa, April 2007.

housing laws and policies at different levels of Government constitutes a useful opportunity for all relevant actors to reinforce their positive aspects and address shortcomings.

38. The Special Rapporteur visited a number of housing projects throughout the country and saw new houses that had been hastily constructed, poorly planned and designed without any consultation with local authorities and residents. These houses were unfortunately inadequate to meet the housing needs of their inhabitants. For example, in Wallacedene, Cape Town, the site of the landmark Grootboom decision, the Special Rapporteur met with a household that had received a one-bedroom RDP dwelling to house a family of eight. Such shortcomings may be the result of basing housing policies on the concept of the household. The Special Rapporteur encourages the authorities to replace the household approach with a focus on the human rights of each individual and family member from the very initial stage of policy design.²³

39. The Special Rapporteur is under the impression that the policies and interventions based on the 2004 “Breaking New Ground” policy have not been adopted in practice by many authorities at the provincial and local levels. Deficits in implementation are exacerbated by the failure at local, provincial and national levels to evaluate how housing (and land distribution) programmes are meeting the needs of the poor. Yet the success of housing policies should be measured by taking into account both quantitative achievements, which include number of houses delivered and beneficiaries reached, and qualitative achievements, which should include the quality of construction, and building materials, size of the structure, the location of housing and its access to water, sanitation and electricity, as well as schools, hospitals and other civic services.

40. For housing to be adequate, it must also be affordable. South Africa experienced a significant increase in housing prices from 2000 to 2004-2005. It is estimated that house prices increased by 92 per cent in contrast with an average increase of workers’ income estimated at 8.3 per cent.²⁴ The International Monetary Fund estimated in 2005 that South Africa’s real estate prices had increased by 200 per cent between 1997 and the beginning of 2005.²⁵ High levels of

²³ The RDP requires that: “As a minimum, all housing must provide protection from weather, a durable structure, and reasonable living space and privacy. A house must include sanitary facilities, storm-water drainage, a household energy supply (whether linked to grid electricity supply or derived from other sources, such as solar energy), and convenient access to clean water.” Section 2.5.7, Housing and Services, available at <http://www.anc.org.za/rdp/rdp2.html>.

²⁴ Roy Cokayne, “House price increases to slow down as affordability deteriorates”, *Business Report* (17 February 2005), available at <http://www.busrep.co.za/index.php?fSectionId=561&fArticleId=2414005>.

²⁵ International Monetary Fund, “South Africa: Selected Issues”, September 2005, available at <http://www.imf.org/external/pubs/ft/scr/2005/cr05345.pdf>.

consumer debt in South Africa are also of concern. In this context, the Special Rapporteur is worried about the critical shortage of public rental housing stock for low income people and notes that market driven price increases are leading to a lack of accessible and affordable rental options.

C. Informal settlements, evictions and resettlement

1. Informal settlements

41. Although race no longer constitutes a legal barrier to residential mobility, there is still a spatial segregation of cities based on income levels. In South Africa, economic growth in cities has contributed to rapid urbanization and to population movement, both from other regions of the country and from abroad. The difficulties in accessing the housing market and lack of affordable housing alternatives explain the consolidation of vast areas of informal settlement where large numbers of people live in desperately inadequate conditions without access to basic services.

42. Official policy recognizes that informal settlement dwellers are one of the most vulnerable population groups.²⁶ For instance, the In-Situ Upgrading of Informal Settlements programme,²⁷ which aims at improving and formalizing such settlements, constitutes an important attempt to enhance living conditions and reduce poverty by enabling communities to maintain social networks and livelihood strategies while improvements are made to their physical environment. The Special Rapporteur welcomes this programme and believes that it needs to be still further developed and implemented at the local level. Although many municipalities have plans to upgrade settlements based on the programme, greater efforts may be needed to ensure these plans achieve their main objectives.

43. The Special Rapporteur visited a number of settlements throughout the country where many residents had no access to water, electricity or sanitation. Organizations and individuals highlighted the urgent need for social services and facilities. In Durban, for example, the Special Rapporteur visited the Kennedy Road and Foreman Road settlements, where no upgrading or service provision has taken place. Lack of access to electricity, sanitation and water, and lack of protection against hazards such as shack fires, has serious consequences for the health and well-being of residents. This situation is compounded by tenure insecurity and the threat of

²⁶ Department of Health, Strategic Plan 2007/08-2009/10, available at <http://www.doh.gov.za/docs/policy/stratplan-f.html>.

²⁷ The programme facilitates the structured upgrading of informal settlements. It applies to in situ upgrading of informal settlements, as well as where communities are to be relocated for a variety of reasons.

forced eviction. It was clear to the Special Rapporteur that these conditions fall far short of safe and sustainable living conditions. In spite of this situation, the Durban municipality has often been praised for good governance practices, which may suggest that a full and transparent rethink is required. The Special Rapporteur was encouraged by the meeting with organizations that tackle problems in settlements and he believes that there is a need for greater dialogue between civil society and the authorities, as well as their greater participation, in order to ensure successful implementation of the settlement upgrading programmes.²⁸

2. Forced evictions

44. South Africa has national statutes, codes and policies designed to protect the right to adequate housing. They provide for fair procedures for eviction of unlawful occupants and prohibit unlawful evictions.²⁹ The courts have provided jurisprudence on questions concerning property rights, security of tenure, the State's obligation to provide housing at least on an emergency basis, and the prohibition of evictions leading to homelessness.³⁰

45. During his mission, the Special Rapporteur was informed of the Government's intention to amend the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (PIE Act), to facilitate the eviction of illegal occupants, and also that initiatives at the provincial level had been taken to pass bills that may also contradict the spirit of the PIE Act. For instance, the KwaZulu-Natal Legislature approved the KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Bill, signed into law by the Province Premier on 18 July 2007.³¹ The Act refers to the "control and elimination of slums" and encourages landowners to prevent informal occupation. Where there are existing informal occupations, the Act encourages landowners to initiate eviction procedures.

46. Subsequent to his mission, in a communication addressed to the authorities on 3 August 2007, the Special Rapporteur forwarded a number of concerns in regard to the Act

²⁸ The Special Rapporteur would like to acknowledge the important work that Abahlali baseMjondolo is carrying out regarding the right to housing of settlement dwellers.

²⁹ See para. 12 above.

³⁰ Centre for Applied Legal Studies, University of the Witwatersrand "Comment on General Notice 1851 of 2006: Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill 2006" available at <http://web.wits.ac.za/NR/rdonlyres/7F93AE17-4914-49E0-B312-D2E608A41F7D/0/PIEACTAMENDMENTSSUBMISSIONCALS.pdf>.

³¹ It was published in the KwaZulu-Natal Provincial Gazette No. 22 as the KwaZulu-Natal Elimination and Prevention of Re-emergence of Slums Act, 2007 (Act No. 6 of 2007).

and requested additional information. These concerns included the fact that the Act does not consider the availability of support to find alternative housing solutions for evictees. Its provision stating that: “In the event of a municipality deciding to make available alternative land or buildings for the relocation of persons living in a slum ...”³² seems to suggest that a municipality may not have any obligation in this regard, which was deemed necessary for some evictions by the Constitutional Court in the Grootboom case. In addition, there seems to be no requirement for consultation with the persons that would potentially be affected by these decisions, in contradiction of the “Breaking New Ground” policy, which promotes a cooperative and participatory approach to informal settlement and emphasizes in situ upgrade programmes. The Act was criticized by some civil society organizations as being in contradiction of constitutional provisions and the interpretation of the right to housing made by the Constitutional Court.

47. In response to the communication, the authorities informed the Special Rapporteur that the progressive elimination of slums, as contemplated in the Act, is intended to operate alongside the sustainable housing development process embarked upon by the Government of South Africa and KwaZulu-Natal Province, based on the Constitution, the National Housing Act and the KwaZulu-Natal Housing Act, No. 12 of 1998 (the KZN Housing Act), so as to ensure the replacement of slums with adequate housing and to avoid anyone being rendered homeless as a result of the slum elimination programmes to be adopted by municipalities under the provisions of the Elimination and Prevention of Re-emergence of Slums Act. It was further indicated that the Act does not contain any provision for the forced eviction of slum dwellers. Instead, it specifically provides that any eviction pursuant to its provisions must be carried out in accordance with the applicable provisions of the PIE Act, the Constitution, and any other national legislation protecting the housing or occupational rights of persons.³³

48. The Special Rapporteur appreciates the extensive reply submitted by the Government. He believes nonetheless that the consistency of this Act with constitutional provisions, relevant Constitutional Court judgements, and international human rights obligations should be examined further.

49. In this context, the Special Rapporteur notes that there may have been a misunderstanding as to how to respect international commitments, such as the Millennium Development Goals, that may have led to efforts being directed to the eradication of slums rather than the

³² Chapter 4, para. 12 of the Act.

³³ For a more in-depth discussion on this issue, please refer to the summary of the Special Rapporteur’s communication and the response from the South African authorities (A/HRC/7/16/Add.1).

improvement of the lives of slum dwellers. The Special Rapporteur is concerned that such legislative developments may weaken substantive and procedural protection concerning evictions and increase exemptions for landlords. They may even result in criminalizing people facing eviction.

50. The Special Rapporteur also received information on evictions taking place in many urban and rural areas. In some cases evictions are allegedly carried out in breach of relevant international human rights standards. Such evictions have been apparently carried out in the middle of the night; belongings were destroyed during evictions; evictions took place without prior notice and in the absence of any consultation as foreseen by the PIE Act;³⁴ there was threat and use of violence, for example, in Johannesburg by the police and private security services such as Wozani Security (Pty) Ltd, (known as the Red Ants);³⁵ and there was an absence of safe and reasonable emergency accommodation after evictions rendering people homeless.³⁶

51. The Special Rapporteur visited for example residents of San Jose, a 16-storey building in Berea, Johannesburg, one of Johannesburg's "bad buildings"³⁷ said to pose health and safety risks to its residents. Residents of San Jose are currently appealing an eviction order and have been living without water and electricity since 2002, necessitating the transport of buckets of water from a single standpipe on the street every day; the lack of adequate sanitation has resulted in the accumulation of a sewage cesspool in the basement of the building. Although the Supreme Court of Appeal has recently ruled in favour of the eviction of the building, it also ordered the

³⁴ See Centre on Housing Rights and Evictions (COHRE), "Any Room For The Poor? Forced Evictions in Johannesburg, South Africa" available at www.cohre.org/store/attachments/COHRE%20Johannesburg%20FFM_high%20res.pdf.

³⁵ This is a Gauteng-based security company. Recommendations as to permissible activities to be carried out by security companies are included in the Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, A/HRC/4/42.

³⁶ The Special Rapporteur has developed new operational guidelines on development-based evictions and displacement, including steps on how to improve consultation before, during and after evictions, available at <http://www2.ohchr.org/english/issues/housing/evictions.htm>.

³⁷ The term refers to a group of 235 inner-city Johannesburg buildings, housing approximately 25,000 people (SAHRC 6th Economic and Social Rights Report, August 2006 and COHRE Evictions Monitor, vol. 1, No. 2, December 2004), that have been listed by the municipal government for eviction. This may be a conservative figure as according to an affidavit presented in April 2007 to the Constitutional Court of South Africa this group of persons number approximately 67,000, Constitutional Court Case Number: Supreme Court Of Appeal Case Number: 253/2006 available at <http://www.law.wits.ac.za/cals/Rand%20Properties/CCFoundingAffidavit.pdf>.

City of Johannesburg to provide those residents who needed it with alternative shelter “where they may live secure against eviction”. The Court stated that although the residents did not have a constitutional right to alternative housing in the inner city, the personal circumstances of the residents of the particular buildings concerned would have to be taken into account in consultation with them before any relocation could take place.³⁸ The case was subsequently referred to the Constitutional Court which has overturned the appeal of the Supreme Court of Justice and has stated that people living in unsafe buildings may not be evicted without prior consultation of the residents by the authorities.³⁹ The Special Rapporteur welcomes this decision, which he believes to be consistent with international legal provisions on the right to adequate housing and their interpretation by United Nations bodies.⁴⁰

52. Backyard shack dwellers⁴¹ throughout South Africa appear not to enjoy sufficient tenure protection. In some cases, once the prime tenant receives a new house (for example, under the NHSS) backyard dwellers are evicted, which could be prevented through better regulation of the landlord-tenant relationship to prevent exploitation of tenants.

53. The Special Rapporteur was disturbed to learn that a significant number of long-term black farm dwellers had also been evicted or displaced since 1994. Most land dispossession during the apartheid era affected black farmers. Those displaced often settled on white-owned lands, where they also worked. A study indicates that the number of those now displaced from such farms is over 2 million, of whom 950,000 black farm workers may have been illegally evicted from white-owned farms.⁴² Despite new legislation such as the Extension of Security of Tenure Act (ESTA) and the Land Reform (Labour Tenants) Act, designed to extend and secure tenure rights,

³⁸ Joint case numbers 04/10330, 04/10331, 04/10332, 04/10333, 03/24101, and 04/13835 available at <http://www.law.wits.ac.za/cals/Inner%20City%20Judgement%20-%203%20March%202006.pdf>.

³⁹ *Occupiers of 51 Olivia Road Berea Township and 197 Main Street Johannesburg v. City of Johannesburg and Others*, case CCT 24/07, decided on 19 February 2008, available at <http://www.constitutionalcourt.org.za/site/occupiers.htm>.

⁴⁰ Such as those included in the Committee on Economic, Social and Cultural Rights general comment No. 7 (1997) on the right to adequate housing (article 11 (i) of the Covenant): forced evictions; and the Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18, annex 1).

⁴¹ The term refers to people living in back yards rented from the prime tenant. It is an informal lease arrangement with the occupier.

⁴² Marc Wegerif, Bev Russell and Irma Grundling, *Still Searching for Security: The Reality of Farm Dweller Evictions in South Africa* (Social Surveys and Nkuzi Development Association, 2005).

the study also indicates that only 1 per cent of evictions involved any legal process, including court judgements, suggesting that the evictees had difficulties in asserting their rights and procuring legal representation. The Special Rapporteur believes that improving the security of tenure for the most vulnerable in South Africa needs to be addressed urgently.

3. Resettlement, restitution and post-settlement support

54. The Special Rapporteur observed the problems faced by all levels of Government to provide adequate post-settlement support to new settlements and to ensure sufficient access to basic services and facilities, including proper sanitation, water, access to schools, and access to livelihood options. There seem to be very few follow-up support mechanisms, such as community and livelihood support systems, regular maintenance and services repair facilities, nor are there meaningful opportunities in the settlements he visited for residents to contribute to the development of their communities.

55. The Special Rapporteur visited the township of Platfontein, in the Northern Cape, where a community of 4,000 San families were resettled in 2003, after returning from forced displacement in Angola and Namibia. Almost no post-settlement support was provided. A large number of people still have no access to water within their plots, there is no waste or garbage collection and there are critical problems concerning dry sanitation maintenance. Houses showed serious failings in construction (leaking roofs, deficient floors). Members of a Kalahari San (Bushmen) community, who received a 35,000 hectare plot of land in 1996, also alleged that no post-settlement support was provided and the community still has no basic infrastructure. Residents appear to have no information on mechanisms that could address their grievances and complaints.

56. The Special Rapporteur also visited a number of settlements in Durban which, although part of RDP housing programmes, do not have access to basic services, such as water and sanitation, or to facilities such as schools or health-care clinics within walking distance. He visited Welbedacht, a project built by the eThekweni Municipality through the slum clearance project which consists of approximately 5,500 units. The residents were relocated to these units prior to the connection of water or electricity and many of the units in Welbedacht showed critical structural defaults.

57. The Special Rapporteur notes that dialogue between communities and the authorities is crucial to overcoming the lack of information and consultation of communities, and may lead to improved recognition of the needs of such communities.

4. Building on the mediation provision

58. Various legal provisions related to the right to housing foresee the establishment of a mediation process before evictions take place.

59. For instance, Section 7 of the PIE Act specifically provides for a mediation process between interested parties. Besides, all respondents have to be served twice with court documents prior to an applicant being able to proceed with its application for an eviction in court. Relevant government departments are also due to give advance notice of any application for an eviction. This allows the potential evictees to approach the legal aid centres for assistance. ESTA similarly provides for mediation and makes further provision for arbitrators outside of the court system to be appointed in order to determine disputes. For instance, in the Port Elizabeth Municipality case,⁴³ the Constitutional Court considered the mediation process at some length in its judgement.

60. The Special Rapporteur notes that mediation has a particularly significant role to play, in particular in communities which have long been divided and placed in hostile camps. The process should enable parties to relate to each other in pragmatic and sensible ways, building up prospects of respectful good neighbourliness for the future.

61. A mediation service could play an extremely valuable role in combating homelessness and in providing up-to-date information not only on where evictions may be taking place, but on where real need exists for emergency, short-term, medium-term and long-term housing development.

D. Large development projects

62. The Special Rapporteur acknowledges that development projects are important for economic growth. He believes that such projects should not be undertaken at the expense of the human rights of the individuals or the environment resulting in contamination of water, forced displacements or evictions, or destruction of people's livelihoods.

1. Mining projects

63. According to official data, mining represents a significant source of national revenues and directly employs over 400,000 workers, equivalent to 2.6 per cent of the economically active population. In 2002 the mining sector contributed 32.9 per cent to the overall value of exported

⁴³ *Port Elizabeth Municipality v. Various Occupiers* 2005 (1) SA217 (CC).

goods. Although mining is an important source of development, it appears to also be a source of conflict.⁴⁴

64. South Africa has regulated mining activity through the Mining Scorecard and the Broad-based Socio-Economic Empowerment Charter for the Mining Industry (the Mining Charter),⁴⁵ which calls for the economic and social responsibility of the mining companies. However, some cases reveal that mining projects do not always guarantee the meaningful participation of rights holders; the accountability of duty bearers; transparency in both process and content; and the necessary special attention to vulnerable groups and discriminatory practices.⁴⁶

65. The Special Rapporteur visited the Limpopo Province where Anglo Platinum's PPL mining company has large mining operations which have already required the relocation of more than 6,000 people and from which 10,000 people are in the process of being relocated. Some community members alleged that the relocations were carried out without appropriate consultation or information, and without following adequate procedures. Many testimonies mentioned violence when police broke into their houses at night to carry out the evictions. The Ga-Pila and Mohlohlo communities, living under the threat of eviction, face serious health risks caused by exposure to open cast mines and explosions. Twenty-five families, including women and children in Ga-Pila, have been living without water and electricity for the last five years. Although the community previously had access to schools, clinics and churches, these were closed down after mining activity commenced.

66. The Special Rapporteur was told that the Government has allegedly still not provided any assistance to address this situation, nor has it responded to the various letters sent by all the affected communities.⁴⁷

⁴⁴ The Bench Marks Foundation, *The Policy Gap: Review of the corporate social responsibility programmes of the platinum mining industry in the platinum producing region of the North West Province*, June 2007, available at http://www.bench-marks.org/downloads/070625_platinum_research_full.pdf.

⁴⁵ The Government produced the Mining Scorecard for assessing the progress of mining companies in respect of a number of key areas as they relate to socio-economic goals

⁴⁶ International Centre for Human Rights and Democratic Development, *Human Rights Impact Assessments for Foreign Investment Projects*, (2007), available at http://www.dd-rd.ca/site/PDF/publications/globalization/hria/full%20report_may_2007.pdf.

⁴⁷ The Special Rapporteur was informed that on 17 April 2007, community representatives addressed their grievance to the Anglo Platinum annual shareholders' meeting, held in London that day.

2. Football World Cup

67. The FIFA World Cup will take place in South Africa in 2010. Although the country has successfully hosted various other large events in the recent past, 350,000 visitors are expected, representing 10 times the number for past events.⁴⁸

68. More than ZAR 70 billion has been budgeted for the building and upgrading of South Africa's 10 World Cup stadiums and for related supporting infrastructure. Among other investments, Johannesburg plans a ZAR 3 billion high-speed train; a refurbished sports stadium; and a ZAR 400 million public square.⁴⁹

69. Notwithstanding the positive gains that can be achieved by holding such an event, the Special Rapporteur is concerned about the impact the tournament may have on adequate housing. The Housing Minister noted that plans to build hundreds of thousands of new low-cost homes could be affected by shifting budget demands in the run-up to the World Cup.⁵⁰ There is also a genuine concern about the possible displacement and direct or indirect evictions that could occur due to infrastructure construction. Reverting Johannesburg into a world class city⁵¹ is already increasing housing prices and increased demand for construction materials has led to a foreseeable shortage of cement.

70. The Special Rapporteur notes that there is a need for in-depth analysis and further information, in particular at the policymaker level, on the impact that this large event could have on housing, as well as other social issues. He also notes the need for monitoring the commitments to guarantee human rights made by the country during the bidding process.

⁴⁸ Sharon Lafraniere, "South Africa v. itself, in race to get ready for World Cup," (23 April 2007), available at www.nytimes.com.

⁴⁹ Michael Wines, "Johannesburg rises above its apartheid past", (16 July 2006), available at <http://travel.nytimes.com/2006/07/16/travel/16next.html>.

⁵⁰ Agence France-Presse, Cape Town, "WC could put squeeze on housing plans", available at <http://www.newagebd.com/2007/feb/17/spt.html>.

⁵¹ Growth and Development Strategy 2006, City of Johannesburg, available at <http://www.joburg.org.za/content/view/139/114/>.

E. Provision of public services

1. Water

71. A rights-based legislative framework and public policies aimed at extending access to water is in place to empower local communities and reduced inequalities. The 1996 Constitution included a Bill of Rights enshrining the right to have access to sufficient food and water (section 27). This constitutional right was given legislative content under the Water Services Act (1997) and the National Water Act (1998). Key provisions include: lifeline or social tariffs to ensure that all South Africans can afford sufficient water services for adequate health and hygiene and stepped tariffs to provide a cross-subsidy from high-volume users to low-volume users. In 2001 South Africa became the only country with a free basic water policy.⁵²

72. Since 1994, 10 million more people have received access to a tap providing safe water, within 200 meters from their home, with coverage rates rising from 60 per cent to 86 per cent. By 2006, according to the Government, over 31 million people were served by free basic water.⁵³ The RDP set medium-term targets to provide 50-60 litres of clean water per person per day. The Government has suggested since mid-2001, that all municipalities provide a basic minimum of 25 litres of water free of charge per person per day.⁵⁴ The specific wording of the ruling party's 2000 campaign promise is laudable: "ANC-led local government will provide all residents with a free basic amount of water, electricity and other municipal services, so as to help the poor. Those who use more than the basic amounts will pay for the extra they use".

73. This is an excellent mandate. The Special Rapporteur wishes to draw this exemplary language to the attention of other States as it shows how a human rights-based approach can be introduced to the provision of basic services in a context of limited resources. Because of its exemplary nature, it is also particularly important to draw lessons from the South African experience. In practice, the water policy has faced implementation problems, and pricing policies have led to supply cut-offs for non-payment, affecting 275,000 households (an estimated 1.5

⁵² United Nations Development Programme, Human Development Report 2006, *Beyond scarcity: Power, poverty and the global water crisis*.

⁵³ Ibid.

⁵⁴ Actual policy provides for 6,000 litres per household per month, calculated as 25 litres per person per day in a household or property of eight people. In multi-dwelling households sharing the same municipal account (all on one property), this does not seem to translate to a volume of 25 litres per person per day.

million people) in 2003, according to a leading government official.⁵⁵ UNDP has reported that the 25 litre threshold for free basic water is too low for some large households and that supplies in some areas have been erratic, forcing households to travel large distances to collect water. Besides, this amount falls well below average water needs of 50 per litres per individual per day, as calculated by the World Health Organization.

74. In 2003 SAHRC made a series of recommendations in order to achieve the progressive realization of the right to water: the provision of free basic services and 50 litres per person per day to larger families; the provision of water to farm dwellers and HIV/AIDS sufferers; the restructuring of the pricing system to cater for the poor, the application of a cross-subsidization policy and monitoring of the pricing system of the water boards, and the proper monitoring of project and programme implementation as a matter of urgency.⁵⁶

75. In 2006, SAHRC reported that the State had adopted policies intended to advance the right of access to sufficient water. It also reported that the national Department of Provincial and Local Government has been implementing the Municipal Infrastructure Grant programme to help municipalities meet their obligations of providing services and speeding up the provision of water and sanitation. The Commission highlighted achievements including: the reduction of water provision backlogs; the allocation of funds to provinces to reduce sanitation backlogs; the promotion of water conservation; increase in the capacity of municipal staff to institutionalize the municipal infrastructure grant; and the reduction of rates charged for water in many rural areas.

76. The Special Rapporteur notes that it would be very useful to assess the human rights impact of the use of prepaid water meters by some municipalities as a means of ensuring that water consumption beyond the free basic water allocation is paid for. The human rights principle that particular efforts should be made to protect the most vulnerable is particularly pertinent in this case. Some studies have revealed the problems involved in using these meters in poor communities. The meters allow for disconnection from the service without the user being given the requisite legislative notice of disconnection.⁵⁷ Some users have taken the relevant authorities

⁵⁵ *Turning on the taps*, Muller, Mike, *Mail & Guardian*, 25 June 2004.

⁵⁶ South African Human Rights Commission, *Economic and Social Rights: 5th Report 2002/2003*, (June 2004).

⁵⁷ ESC Review, vol. 8, No. 2, July 2007, Community Law Centre, University of the Western Cape.

to court.⁵⁸ The Special Rapporteur is of the view that redistribution needs to be achieved through cross-subsidization by charging higher prices in higher-income neighbourhoods. This would allow for a larger supply of free basic water for the benefit of the residents of low-income neighborhoods. Residents from low-income areas also correctly argue that testing for “indigence”⁵⁹ - as favoured by the supplier - would result in stigmatization, inaccuracy and bureaucratic delay. Other issues for low-income people, such as inadequate sanitation (the “bucket system”, condominium sewers and pit latrines), should be immediately revisited, given the implications for their right to health.

77. The Special Rapporteur believes shortage of water and disconnections constitute a particular problem for those living with diseases, including cholera and diarrhoea, as well as people living with HIV/AIDS. According to the Joint United Nations Programme on HIV/AIDS,⁶⁰ almost 20 per cent of the population was infected by or suffered from HIV/AIDS in 2005 and although an additional amount of water can be made available for emergency situations, the beneficiaries have to be registered on the indigent record. The links between water and health suggest the need for a more generous free basic water allowance.⁶¹

2. Electricity

78. The Special Rapporteur welcomes the dramatic improvement that the country has made regarding access to electricity. Whilst only 36 per cent of the population had access to electricity in 1994, this had doubled to 72 per cent of the population in 2007. Nonetheless, large numbers of South Africans, in particular those living in poorer conditions, still have no access to electricity, while others have inadequate and unreliable supplies (sometimes less than 10 amperes input to households, not sufficient for cooking and heating). For instance, the residents of Mandelaville, a settlement upgraded by the Johannesburg Social Housing Company (JOSHCO), still have no access to electricity one year after they received their new houses. Moreover, houses have been built without connections for electricity.

⁵⁸ *Mazibuko & Others v. City of Johannesburg & Others*, case 06/13865, High Court of South Africa (Witwatersrand Local Division), July 2006, available at <http://www.law.wits.ac.za/cals/phiri/index.htm>.

⁵⁹ For a household to be defined as indigent it must meet a series of revenue criteria and must show evidence that it is unable to pay for water.

⁶⁰ Joint United Nations Programme on HIV/AIDS, *2007 AIDS Epidemic Update*.

⁶¹ Regarding the water policy, the Special Rapporteur recalls the Committee on Economic, Social and Cultural Rights general comment No. 15 (2002) on the right to water (arts. 11 and 12) and its guidelines on the importance of ensuring sustainable access to water for all through, among others, the principles of economic accessibility and non-discrimination.

79. It is expected that a system similar to the prepaid water meters system will be implemented targeting low-income households. The 50 kilowatt hours/month free basic electricity supply common in many municipalities and Eskom-supplied districts appears inadequate to provide citizens with their constitutional right to a decent home environment free of paraffin and dangerous particulates from indoor cooking/heating with dirty energy.

80. While the average cost of electricity in South Africa seems to be amongst the lowest among large middle income countries, government authorities informed the Special Rapporteur that rural households are paying five times the price that big companies do to access electricity. In this regard, the Special Rapporteur acknowledges that the authorities need to encourage economic activity, which provides employment and work, but highlights the necessity of affordable public service tariffs to enable low-income households to access and maintain services, and higher rates to discourage excessive consumption by large users.

F. Consultation and participation

81. Over many decades South African non-governmental organizations, community-based organizations, trade unions and social movements have played a critical role in the political discourse of the country and particularly in sustaining and consolidating the newly born democracy, although they have to cope with financial difficulties.

82. During his visit the Special Rapporteur noted that there appears to be insufficient meaningful consultation between all levels of Government, civil society organizations and affected individuals and communities. Residents from every community facing possible eviction spoke with frustration about the lack of information on resettlement and relocation, as well as being denied the opportunity to participate in any stage of resettlement planning and implementation. The Special Rapporteur noted that there is a need to strengthen civil society networks, in order to share information and actively engage in participatory processes of designing and implementing policies aimed at realizing human rights.

83. As noted in “Breaking New Ground”, programmes aimed at delivering housing and creating sustainable human settlements will only succeed if affected people are directly informed and where the programmes are responsive and targeted to the specific needs of a given community.

G. Women and housing

84. The Special Rapporteur has consistently noted that women are particularly vulnerable to inadequate housing, in particular single women, women with children, women from indigenous communities, women with disabilities, migrant women and women with HIV/AIDS.

85. The Special Rapporteur acknowledges the efforts of the South African Government at all levels to meet its goal of delivering 30 per cent of housing to women-headed households. However, the lack of affordable housing, lack of timely access to public housing, and inadequate government provisions for long-term safe housing, particularly in rural areas, means that many women are still forced either to remain in, or return to, situations of domestic violence, and continue to live in inadequate housing where they risk the safety and health of their children and themselves. Such situations violate not only the right of access to adequate housing but the human right to be free from violence, which is protected under the South African Constitution. The Special Rapporteur draws particular attention to the need for the State to strengthen national legal and policy frameworks for protecting women's rights to adequate housing and to provide avenues for redress where violations occur. He also draws attention to the need to bridge the gap between legal and policy recognition of women's right to adequate housing and implementation by States of national programmes to execute the legal and policy framework, including supporting initiatives by civil society groups to the same end.⁶²

86. The Special Rapporteur was disturbed to receive the testimony of a woman who, in spite of having been in an abusive relationship for many years and having divorced her husband, was forced to continue to live with him because she had nowhere else to go. This woman had been on the public housing waiting list since 1996 but 10 years later was still waiting.

87. Although there are provisions guaranteeing women in South Africa inheritance and property rights, the Special Rapporteur was told about rural communities where widows or single women living on farms cannot apparently enjoy security of tenure due to gender discrimination.

⁶² The Special Rapporteur has presented various reports on women and adequate housing, <http://www2.ohchr.org/english/issues/housing/women.htm>.

H. Vulnerable groups

88. The Special Rapporteur appreciates the efforts recently undertaken to address the situation of some particularly vulnerable groups.⁶³ Nevertheless, the Special Rapporteur believes that there is a critical lack of coordinated countrywide housing and support for people with particular housing requirements, including people with disabilities, those living with HIV/AIDS, orphaned children and young people, and the homeless. According to official data, the South African HIV-positive population is estimated at approximately 5.3 million.⁶⁴

89. The Housing Act 1997 calls for “the meeting of special housing needs including, but not limited to, the needs of the disabled;” and “... the housing needs of marginalized women and other groups disadvantaged by unfair discrimination”.⁶⁵ Accordingly, housing development must provide the widest possible choice of housing and tenure options. Despite this legislative intention, the Special Rapporteur observed that there is no specific housing programme to address these groups. Housing for groups particularly vulnerable to discrimination is integrated into the National Housing Policy, and the intention is to allocate 5 per cent of the total houses delivered to special needs beneficiaries whose monthly income level is between ZAR 1,500 and 7,500. This means that those living under this income threshold do not qualify for the subsidy and others need to wait several years on the housing lists, where there seems to be no provision for priority housing allocation on the basis of such specific requirements.

90. The Special Rapporteur welcomes initiatives that engage relevant groups in the design and implementation of housing policies targeting groups particularly vulnerable to discrimination. For instance, the draft special needs housing policy of the city of Cape Town is the outcome of a process of consultation with relevant organizations and service providers. It also includes input and comments from consultative workshops led by the city. In the meantime the first application for special needs housing subsidies has been endorsed by Cape Town’s social housing department and will target foster care homes for orphans and vulnerable children.

⁶³ For instance the Special Needs Housing Programme integrated with the National Housing Policy, housing assistance to households affected by the death of guardians/parents, or the Emergency Housing Programme.

⁶⁴ Statistics South Africa, covering all residents at the 2007 mid-year, available at http://www.statssa.gov.za/Publications/P0302/Press_statement_midyr%20estimates_2007_final.pdf.

⁶⁵ Housing Act No. 107, section 2 (1) (e) (viii) and (x).

IV. RECOMMENDATIONS

91. The Special Rapporteur welcomes the constitutional and legal emphasis given to the right to adequate housing, as well as the achievements of South Africa since the end of apartheid. He recommends that Member States study these examples and draw on South Africa's experience in this field.
92. The Special Rapporteur believes that South Africa should improve coordination amongst all government departments in charge of service delivery such as water, sanitation or electricity, and institutions in charge of implementing housing, land, health and social services policies, in order to ensure an integrated approach which recognizes the indivisibility of the human rights of individuals.
93. The Special Rapporteur suggests that a clear implementation strategy backed by rigorous monitoring and evaluation, and which involves affected communities, should be formulated at each level of Government and support organizations, in order to implement well-designated policies, such as "Breaking New Ground".
94. Revitalization of urban areas must take place in a way that genuinely promotes a socially and economically inclusive society. The redevelopment of urban areas must not be left only to market forces, as that could result in the exclusion of poor people from access to housing and livelihoods including essential public services.
95. South Africa should provide sufficient legal aid funding for civil and administrative law proceedings to ensure that people whose economic, social and cultural rights have been breached have proper access to affordable and quality legal representation to enforce their rights and seek redress, where appropriate, as provided for in the South African Constitution.
96. The Special Rapporteur believes there is a need to monitor the implementation of court judgements that protect the right to housing at all levels of the South African judiciary system. Given the mandate of the South African Human Rights Commission (SAHRC), it would help achieve progress in the fulfilment of economic, social and cultural rights to provide the Commission with the necessary resources to monitor the implementation of Court judgements related to the realization of these rights. The SAHRC should increase its monitoring and investigative work on the realization and violation of economic, social and cultural rights.
97. Given the apparently widespread problem of forced evictions across the country, the Special Rapporteur calls for a halt in the introduction of new provincial bills regarding eradication of slums and evictions until all national, provincial and local legislation, policies

and administrative actions have been brought into line with constitutional provisions, relevant Constitutional Court judgements, and international human rights standards that protect the human right to adequate housing and freedom from forced eviction.⁶⁶

98. Concerning evictions, the Special Rapporteur urges the authorities to implement relevant Constitutional Court judgements on the right to adequate housing and on forced evictions and to draw lessons from the human rights principles upheld in these judgments for the formulation of national, provincial and local housing law and policies.

99. The authorities should prosecute all farmers who illegally evict farm workers. At the same time human rights education is necessary to ensure that all citizens know about their human right to housing and their right to be protected against eviction.

100. In order to achieve the agreed land reform goals the Special Rapporteur calls for the adoption by the Government without delay of the recommendations of the 2005 Land Summit. The Special Rapporteur endorses the call for inclusive partnerships in which the Government works, in cooperation with social movements, landless people, farming communities and other actors, towards holistic agrarian reform.

101. The Special Rapporteur urges the authorities to ensure that mining projects are in line with national regulations, and to assess the impact of mining activity on local populations. In situations such as in Limpopo Province, where there appear to be serious irregularities and human rights violations, the lease agreement should be reviewed.

102. There must be commitment across all levels of Government to adequate consultation and participation of civil society in planning. This may require considering how to provide national and local funding of civil society organizations. South Africa may want to consider creating a mediation service carrying out the statutory obligations referred to in the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act and the Extension of Security of Tenure Act and expanded to do relevant research, with the capacity to inform court judgements on evictions and able to provide up-to-date information to those seeking advice on housing issues.

103. The Special Rapporteur highlights the importance that water has in the fulfilment of the right to the highest attainable standard of health, the right to adequate housing and the right to adequate food; he believes the prepayment meters may, as implemented currently, severely compromise the realization of numerous human rights and be contrary to the

⁶⁶ The Special Rapporteur has developed new operational guidelines on development-based evictions and displacement, including steps on how to improve consultation before, during and after evictions available at <http://www2.ohchr.org/english/issues/housing/evictions.htm>.

constitutional provisions guaranteeing the right to housing and the right to water. The Government should reconsider this policy and associated financing arrangements, in order to further improve its efforts to ensure the equitable access of all to water. The Government of South Africa could also consider developing a national water strategy, including the establishment of a national water regulator.

104. In pursuit of a continuing increase in comprehensive coverage of civic services, which are essential to the realization of the right to adequate housing, including water, electricity and sanitation, South Africa may wish to consider allocation of a greater share of the central budget to local municipalities.

105. The Special Rapporteur recommends that all possible measures be taken in order to ensure equal opportunities in access to housing. There is an urgent need to restructure the availability of rental housing for low-income groups, to guarantee security of tenure for tenants and to formulate a specific national policy for groups with specific housing requirements (special housing needs).

106. The Special Rapporteur encourages South Africa to consider ratifying the International Covenant on Economic, Social and Cultural Rights, so as to reflect in its international legal obligations the same progressive approach enshrined in its Constitution, and to consider carefully the implementation of concluding observations formulated by the United Nations human rights treaty bodies, as well as the recommendations made by special procedures of the Human Rights Council.

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