

Recommendations of the United Nations Special Rapporteur on Adequate Housing following his mission to South Africa

The United Nations (UN) Special Rapporteur on Adequate Housing, Mr Miloon Kothari, visited South Africa from 12 to 24 April 2007, with the aim of examining the status of the realisation of the right to adequate housing in the country. During his visit, he met with government representatives at state, provincial and municipal level, civil society organisations, social movements, academics and women's groups.

He has now produced a report on this mission (UN doc. A/HRC/7/16/Add.3 of 29 February 2008). In the report, he acknowledges that the South African Constitution and legislation adequately recognise and protect the right of access to adequate housing and that the government has made significant progress in realising this right since the end of apartheid. The Special Rapporteur recommends that other states should draw on South Africa's experience in this field.

However, he notes that the government's approach to the implementation of housing laws has been fragmented, hampering the full realisation of the right to adequate housing.

Recommendations of the Special Rapporteur

The Special Rapporteur made the following recommendations:

Coordination among government departments

- South Africa should improve coordination among all government departments in charge of service delivery, such as water, sanitation and electricity, and institutions in charge of implementing housing, land, health and social services policies. This would ensure an integrated approach to housing that recognises the indivisibility of all human rights.

Implementation of housing policies

- A clear implementation strategy backed by rigorous monitoring and evaluation, and involving affected communities, should be formulated at each level of government and support organisations to implement housing policies.

Urban renewal

- The renewal 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 accessing housing and livelihoods, including essential public services.

Legal aid

- The government should provide sufficient legal aid funding for civil and administrative law proceedings so as to ensure that people whose economic, social and cultural rights have been breached have access to affordable and quality legal representation to enforce their rights and seek redress, where appropriate, as provided for in the South African Constitution.

A press statement issued by the Special Rapporteur following his visit to South Africa was published in a previous issue of the *ESR Review*: 8(2).

Implementation of court judgments

- There is a need to monitor the implementation of court judgments that protect the right to housing.
- Given its mandate, the South African Human Rights Commission (SAHRC) should be provided with the necessary resources to monitor the implementation of court judgments related to the realisation of economic, social and cultural rights. This would accelerate progress in the fulfilment of these rights.
- The SAHRC should increase its monitoring and investigative work on the realisation and violations of economic, social and cultural rights.

Evictions

- The government should stop the introduction of new provincial Bills that seek to authorise evictions and the eradication of slums until all national, provincial and local legislation, policies and administrative actions have been brought into line with constitutional provisions, local judgments and international human rights standards that protect the human right to adequate housing and freedom from forced eviction.

- The authorities are urged to implement court judgments on the right to adequate housing and on forced evictions and to seek guidance from these judgments when formulating national, provincial and local housing law and policies.
- The authorities should prosecute all farmers who illegally evict farm workers. Human rights education is necessary to ensure that all citizens know about their right to housing and to protection against eviction.

Land

- The government should adopt, without delay, the recommendations of the 2005 Land Summit in order to facilitate the achievement of agreed land reform goals.
- The government should work with social movements, landless people, farming communities and other actors towards holistic agrarian reform.

Impact of mining projects

- The authorities should ensure that mining projects are in line with national regulations, and assess the impact of mining activity on local populations so as to avoid the forcible relocation of communities.
- Lease agreements for mining projects (like those in Limpopo province) that have been implicated in serious irregularities and human rights violations such as the contamination of water, forced displacements or evictions and the destruction of the livelihoods of people should be reviewed.

Consultation and participation

- There must be commitment across all levels of government to adequate consultation and participation by civil society in planning. This may require the provision of national and local funding for civil society organisations.
- The government should consider creating a mediation service, in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 and the Extension of Security of Tenure Act 62 of 1997, which would also carry out research into evictions that would be helpful to courts and those seeking advice on housing issues.

Basic services

- The government should consider allocating a greater share of the central budget to local municipalities, as part of its quest to extend the provision of municipal services.

Access to water

- The government should reconsider its policy on prepayment meters and associated financing arrangements, in the light of its obligation to improve equitable access to water.
- The government should consider developing a national water strategy, including the establishment of a national water regulator.

Equal opportunities in access to housing

- All possible measures should be taken 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).

Ratification of the ICESCR

- The government is encouraged to ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR), so as to reflect in its international legal obligations the same progressive approach enshrined in its Constitution.

Observations and recommendations of UN bodies and special procedures

- The government should consider carefully the implementation of concluding observations formulated by the UN human rights treaty bodies, as well as the recommendations made by special procedures of the UN Human Rights Council.

This summary was prepared by **Lilian Chenwi**, the coordinator of, and a senior researcher in, the Socio-Economic Rights Project.

The Special Rapporteur's report on his mission to South Africa was presented at the seventh session of the Human Rights Council on 12 March 2007. The full report is available on <http://www2.ohchr.org/english/bodies/hrcouncil/7session/reports.htm> or <http://daccessdds.un.org/doc/UNDOC/GEN/G08/110/55/PDF/G0811055.pdf?OpenElement>.