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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”

**Report of the Special Rapporteur on adequate housing as a component
of the right to an adequate standard of living, Miloon Kothari**

Addendum

**Preliminary note on the mission to Spain
(20 November to 1 December 2006)**

* The present document, which carries the symbol number of the fourth session of the Human Rights Council, is scheduled for consideration by the fifth session of the Council.

I. PURPOSE AND DESCRIPTION OF THE MISSION TO SPAIN OF THE SPECIAL RAPPORTEUR ON ADEQUATE HOUSING

1. At the invitation of the Government of Spain, the Special Rapporteur visited Spain from 20 November to 1 December 2006. During the course of the mission, the Special Rapporteur visited Madrid, Bilbao, San Sebastian, Almeria, El Ejido, Roquetas de Mar, Seville, Barcelona and Zaragoza and met with high-level representatives from the State, autonomous regions and local authorities. He received testimonies from people affected by alleged violation of their right to adequate housing and met with a large number of representatives of civil society, including social movements, non-governmental organizations, academics, independent human right investigators, women's groups and representatives of minorities such as the Roma (*gitanos*) communities. The Special Rapporteur wishes to express his gratitude to the Government of Spain for the invitation and the support it provided during the mission.

II. LEGISLATION AND GOOD PRACTICES

2. The right to decent and adequate housing is recognized in article 47 of the Spanish Constitution, which also contains provisions that 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 of the Constitution states that the "provisions relating to the fundamental 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".

3. The Special Rapporteur acknowledges the efforts in regard to the implementation of the right to adequate housing that have been made by the Spanish authorities at all levels. He welcomes the creation of a housing Ministry at State level and progress in legislation, including the draft land law, the new housing plan, and the new Technical Building Code, the National Plan on Water Quality and regional land laws such as in the Basque country and Andalusia region and the draft legislation on the right to adequate housing in Catalonia.

4. The Special Rapporteur also welcomes the active participation of the Ministry of Housing in the Good Practices and Local Leadership Program (BLP) of UN-Habitat. Spain continues to maintain a National Habitat Committee. Several catalogues on good practices have been published such as the "Catálogo de Buenas Prácticas Españolas". The Ministry of housing has also been technically and financially supporting the Ibero-American Forum on Good Practices.

III. AREAS OF CONCERN

5. Nevertheless, at the end of his visit, the Special Rapporteur reached the preliminary conclusion that Spain is facing a serious housing crisis, owing to several factors.

6. Information provided to the Special Rapporteur indicates that sectors of the Spanish population face affordability problems. Among developed countries, Spain has experienced one of the highest increases in housing prices in recent years. Even amongst homeowners in Spain, a sizeable population is experiencing difficulties. The Special Rapporteur notes that a significant proportion of this population is paying more than 40 per cent of salary (net of taxes) on mortgages.¹ He is concerned that the allocation of such a large amount of personal income to housing may have a direct impact on the enjoyment of other human rights, including education, food or clothing.

7. He received a number of testimonies by persons who were defaulting on their payments because of the increases in interest rates.² Even though, according to the data of the Spanish Mortgage Association (Asociación Hipotecaria Española, AHE), the percentage of vulnerable people in Spain with a mortgage in default in September 2006 was only 0.3 per cent, the situation does not seem to be sustainable in the long term, and the Special Rapporteur fears that more people will experience payment problems in the future, which could affect their right to adequate housing.

8. Spain has a low percentage of public housing. This stock is divided between VPOs (*vivienda de protección oficial de promoción privada*)³ and social rental housing. Although the level of financing for protected homes in Spain has recently increased, according to official information, and over 410,000 families have benefited from some kind of financial help for housing in 2005, it is still considered insufficient. The inefficiency of low-cost housing policy has also been noted by the Organization for Economic Cooperation and Development (OECD).⁴

9. Regarding rental housing, while in 1950 total rental housing in Spain exceeded ownership housing, today the former only makes up 12 per cent of all dwellings, constituting one of the smallest shares in Europe. Virtually all of it is in the private sector with only 2 per cent of dwellings classified as public social housing compared to 10 to 30 per cent in other countries of the European Union. In addition, although between 18 and 50 per cent lower than in the private market, prices of social housing tend to be too high for the lower- income

¹ Royal Institution of Chartered Surveyors (RICS), *European housing review 2006*, chapter 9, p. 155. <http://www.rics.org/>.

² About 80 per cent of Spanish families cannot save money each month because of the payments of the mortgages and other debts. Moreover, 10 per cent of the population cannot pay their debts (*Expansión*, 1 November 2006, p. 30, <http://www.ces.es/servlet/noxml?id=CesColContenido%20M01162451967926~S129127~N20061101-0080.PDF&mime=application/pdf>)

³ VPOs provide financial help to buyers and tenants and also limit the maximum prices of these units.

⁴ *Economic Survey of Spain 2005: Stabilising the housing market* (<http://www.oecd.org/eco/surveys/spain>).

segments of the population.⁵ The liberalization of rental contracts and the lack of a public stock of affordable housing have contributed to a considerable rise of private rental prices. This liberalization has reportedly reduced security of tenure for tenants in Spain.

10. Speculation in housing has been a major source of extreme profits from which only some large developers have benefited. As a result of the priority given to an unregulated home-ownership model, Spain possesses the largest number of vacant houses of the European Union. According to the 2001 census, vacant dwellings represent around 15 per cent of the total housing stock (more than 3 million units, not taking into account secondary residences). This percentage largely exceeds the estimated present deficit in rental housing market (about 800,000 units). Speculation and the financial benefits generated by housing have reportedly led to large-scale corruption.

11. Testimonies and information received by the Special Rapporteur indicate various discriminatory factors with regard to access to housing, including the gentrification of cities and the resulting segregation, evictions and “mobbing” (physical and psychological violence used to force people out of their home for speculative purposes). The Special Rapporteur is particularly troubled by information suggesting that very few court cases led to decisions on alleged mobbing. Many testimonies attest that this practice particularly affects the elderly.

12. Although the situation of housing affects all sectors of the populations, some have been more adversely affected including:

- The Spanish Institute of Statistics estimated at the end of 2005 that there were 21,900 homeless persons in Spain. Yet, this is a conservative figure as there is no official consensus on the definition of homelessness;

- The Special Rapporteur received testimonies of women experiencing various types of impediment to their right to adequate housing, including women experiencing domestic violence and/or fear of aggression;

- Young people in Spain have been particularly affected by the current housing crisis. For instance, only 10.9 per cent of youth aged 18-24 years old 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.⁶ 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;

- The Special Rapporteur received testimonies of migrant workers who live in informal dwellings, on building construction sites, in overcrowded houses, who face discrimination to access housing or are forced to rent beds by the hour (“hot beds”);

- He also visited slums, some existing for decades, in which some marginalized communities such as the Roma have been living. He also visited other communities living in housing estates and experiencing poor housing and living conditions, overcrowding and discrimination.

⁵ The Special Rapporteur is of view that is a sizable percentage of the population maybe falling into this category. Figures from National Statistic Institute (2006), for example indicate that 20 per cent of Spaniards live below the poverty line.

⁶ Observatorio Joven de Vivienda en España N° 13, Cuarto trimestre de 2005 (www.cje.org/).

IV. PRELIMINARY RECOMMENDATIONS

13. At this stage, the Special Rapporteur would like to make the following preliminary recommendations. Spanish authorities should consider:

- Fundamentally reviewing the economic and social policies that have an impact on housing and related issues. Policies and laws that flow from such a reconsideration should be underpinned by a human rights approach to housing. The legal basis of this approach already exists in the Spanish constitution and the international human rights instruments that Spain has ratified;

- Recognizing housing as a basic human right and not, as is now predominantly the case, a mere commodity, to be bought and sold. The Government in all its law and policies needs to implement the right to housing and the social function of property as recognized in its national laws and by international standards;

- Adopting a comprehensive and coordinated national housing policy based on human rights and the protection of the most vulnerable. The Special Rapporteur calls for the indivisibility of human rights approach while articulating policies on adequate housing;

- Seriously reflecting upon the functioning of the market, including intervening if necessary to control land and property speculation. Such a review of market policies should include a review of the current home-ownership model, including subsidies targeted to the higher end of the housing market, and its possible negative impact on low-income housing options;

- Ensuring means of justiciability and efficient complaint mechanisms to permit the implementation of the right to adequate housing contained in the Spanish Constitution and international instruments;

- Rigorously investigating and appropriately penalizing practices such as "mobbing", corruption, or discrimination in the real-estate sector. Proper mechanisms to investigate sanction and redress should be made fully available to those parts of the population affected by these practices;

- Urgently addressing the situation of the insufficiency of housing and social services for women and for vulnerable groups and people with low incomes, homeless, migrants and Roma communities;

- Facilitating access to various types of accommodation to include shelters, emergency housing, boarding houses and transitional housing;

- Increasing the availability of rental housing, through more efficient utilization of vacant buildings, but also through the building 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 which under the current law does not exist for more than a five-year period;

- Improving the effectiveness of the process already undertaken of wide consultation with civil society on designing policies, strategies and planning in housing and urbanization by all level of State authorities.
